

In the Matter Of:

TONEY vs. QUALITY RESOURCES AND SEMPRIS

1:13-cv-42

CHERYL MERCURIS

July 08, 2015

30(b)(6)



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TONEY vs. QUALITY RESOURCES AND SEMPRIS

July 08, 2015

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1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE NORTHERN DISTRICT OF ILLINOIS
3 EASTERN DIVISION
4 CASE NO. 1:13-cv-42

5
6 SARAH TONEY on behalf of herself
7 and others similarly situated,

8 Plaintiffs,
9
10 vs.

11 QUALITY RESOURCES, INC.,
12 SEMPRIS, LLC,

13 Defendants.

14 /

15 30(B)6 VIDEOTAPED DEPOSITION OF QUALITY RESOURCES, INC.
16 DESIGNEE: CHERYL MERCURIS
17 Taken By Counsel for Plaintiff
18 (Pages 1 - 176)

19
20 Wednesday, July 8, 2015
21 10:14 a.m. - 3:41 p.m.

22
23 Greenspoon Marder, P.A.
24 401 East Jackson Street
25 Suite 1825
 Tampa, Florida

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32
33 Stenographically Reported By:
34 Jennifer Figueroa, RPR, CLR, FPR
35 Notary Public, State of Florida at Large
36 Esquire Deposition Solutions - Tampa Office
37 Phone - 813.221.2535, 800.838.2814
38 Esquire Job No. J0128159

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22 ALSO PRESENT:

23 KRISTINA CHAPPELLE, CLVS - VIDEOGRAPHER

24

25

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1 Videotaped deposition taken before Jennifer
2 Figueroa, Registered Professional Reporter and Notary
3 Public in and for the State of Florida at Large, in the
4 above cause.

5 * * * * *

6 THE VIDEOGRAPHER: We are now on the video
7 record. Today is Wednesday, the 8th day of July,
8 2015. The time is 10:14 a.m. We are here in the
9 case of Sarah Toney versus Quality Resources, Inc.,
10 et al., Case No. 1:13-CV-0042. Would all counsel
11 please state their appearance for the record,
12 starting with the plaintiff.

13 MR. BRODERICK: Edward Broderick for the
14 plaintiff, Sarah Toney.

15 MR. DEVINE: Matthew Devine for defendant
16 Sempris; along with my colleague who is
17 participating by telephone, Brienne Letourneau.

18 MR. EPSTEIN: Richard Epstein and Jeffrey
19 Backman for the defendant, Quality Resources.

20 THE VIDEOGRAPHER: Madam Court Reporter, would
21 you please swear in the witness.

22 THE COURT REPORTER: Could you -- thank you.

23 Do you swear or affirm that the testimony
24 you're about to give will be the truth, the whole
25 truth, and nothing but the truth?

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1 THE WITNESS: I do.

2 THE COURT REPORTER: Thank you.

3 THEREUPON,

4 CHERYL MERCURIS,

5 having been first duly sworn or affirmed, was examined
6 and testified as follows:

7 MR. BRODERICK: You want to put --

8 MR. DEVINE: Sure. This is Matt Devine.

9 Mr. Broderick and I spoke before the deposition,
10 and to the extent -- we'll reserve our rights to
11 the extent we need to, to keep the deposition open
12 beyond today; but for now, Mr. Broderick and I have
13 agreed to divide our time, three and a half hours
14 for plaintiff, three and a half hours for defendant
15 Sempris, to the extent we need to use it.

16 Fair enough?

17 MR. BRODERICK: Yes, agreed.

18 MR. EPSTEIN: As between the two of you,
19 that's fine; we appreciate the agreement. We're
20 not consenting to anything other than the
21 completion of the deposition once the seven-hour
22 time limit has been reached. Obviously, we're
23 amenable to discussing whatever needs to be
24 discussed to make sure it gets completed in a
25 timely and efficient fashion.

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1 MR. BRODERICK: This will be 1. Sorry, you
2 have to share.

3 (Exhibit 1 marked for identification.)

4 MR. BRODERICK: If you can give that to the
5 witness.

6 THE COURT REPORTER: (Moves head up and down.)

7 MR. BRODERICK: Thanks.

8 DIRECT EXAMINATION

9 BY MR. BRODERICK:

10 Q. So, Ms. Mercuris, we met off the record, but
11 again, my name's Ted Broderick; and I'm representing the
12 plaintiff, Sarah Toney.

13 I'm showing you what's been marked as
14 Exhibit 1, which is the -- well, this is Sempris's Rule
15 30(b)(6) deposition notice. And I wanted to know if you
16 are the person who should be testifying on behalf of
17 Quality Resources as to all of the topics listed at
18 Page 5 through 7?

19 A. I am.

20 Q. Okay. And similarly for the deposition notice
21 issued by my firm, are you the -- are you the person
22 who's going to be testifying on behalf of Quality?

23 A. Yes.

24 Q. Okay. When did you first start Quality
25 Resources?

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1 A. 1992, at the very end. So right around
2 Christmastime; so really, really, the beginning of '93.

3 Q. And have you always worked in the same line of
4 business?

5 A. I've always been in the call-center business,
6 yes.

7 Q. And since '92?

8 A. Yeah.

9 Q. And when did your relationship with Provell
10 start?

11 A. 2005.

12 Q. And how did that come about? Did you contact
13 them, or did they contact you?

14 A. I don't remember.

15 Q. Did you have a prior relationship with anybody
16 at Provell before you started working with them?

17 A. Yes. Now I remember. There was a gentleman
18 named Adam Hanks that was working for Provell in Georgia
19 at the time, and they solicited me.

20 Q. And what was Mr. Hanks's role for Provell?

21 A. He was basically in charge of bringing on
22 clients, like myself.

23 Q. Okay. And could you describe -- so you refer
24 to yourself, Quality Resources, as the client of
25 Provell?

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1 A. A marketer for Provell; client, marketer.

2 Q. Okay. Can you describe what you do -- what
3 Quality does for Provell?

4 A. Sure. We basically obtain customers for them.
5 So we offer their product, which is a shopping club; and
6 we have for ten years. And then after the sale is made
7 and the recording is listened to, we give that to
8 Sempris; and they bill the customer and they service the
9 customer and that becomes their customer.

10 Q. You say when "the recording is listened to,"
11 what do you mean by that?

12 A. We listen to 100 percent of our sales to make
13 sure they're compliant before we send them out. And he
14 also goes in randomly and listens to our recordings.

15 Q. And when you say "he," who are you referring
16 to?

17 A. Sempris.

18 Q. Sempris does. They listen to 100 percent of
19 the recordings that you -- that you transfer a sale
20 on?

21 A. I doubt it. I doubt they listen to 100
22 percent. They listen to a small percentage. They can
23 go in and listen to whatever they want, so I know they
24 do.

25 Q. And how -- how -- how are they able to do

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1 that?

2 A. I'm not really sure, to be honest with you.

3 Q. Is --

4 A. I think they can go into our FTP; I'm not -- I
5 don't really know though.

6 Q. Are -- your recordings are posted to a -- to a
7 FP -- FTP site --

8 A. I believe so.

9 Q. -- which is accessible over the Internet?

10 A. I believe so, but I'm not sure how it's done
11 today. So my IT department makes sure it's done and
12 it's done in a manner that nobody can get in; it's safe.

13 Q. Okay. And when Mr. Hanks approached you in
14 2005, what do you remember about the -- your initial
15 contact with him and what he wanted you to do?

16 A. What he wanted me to do was sell the product.
17 I was working with another company, I believe maybe GE
18 at the time; and he wanted my business for Provell.

19 Q. And what products do you promote for
20 Provell/Sempris? I'm going to refer to Provell and
21 Sempris --

22 A. Okay.

23 Q. -- as -- as the same --

24 A. Same.

25 Q. -- entity.

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1 A. A product called "Budget Savers"; it used to
2 be called "Value Plus."

3 Q. And what -- what is that product?

4 A. It's a shopping, entertainment, dining,
5 travel -- discounts on most anything and everything.

6 Q. And how does Budget Savers bill people for
7 that product?

8 A. They bill a dollar for the first 14 days, and
9 then they bill 29.95 a month after that.

10 Q. And does Quality obtain credit card
11 information from the prospective customer?

12 A. Yes.

13 Q. And how do you transmit that credit card
14 information to Sempris?

15 A. That would have to be done -- or told to you
16 by IT, to be honest with you.

17 Q. Do you believe it's done through the same FTP
18 site?

19 A. I don't know. I know it's done very secure;
20 but I know they've changed over the years, so I'm not
21 exactly sure how they're doing it right this moment.

22 Q. What about in 2012? Do you know how it was
23 done then?

24 A. I really don't. That would be an IT question.

25 Q. Who in your IT department would know the

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1 answer to that?

2 A. Sandy.

3 Q. What's Sandy's last name?

4 A. Marina.

5 Q. And there -- you don't sell any other products
6 for Provell other than Budget Savers or their coupon
7 club?

8 A. No. We did at one time, but we don't anymore.

9 Q. When was that, that you sold something else?

10 A. I don't recall what year it was, but I would
11 guess maybe 2007. We tried a second product for them,
12 but it didn't work for him.

13 Q. Do you remember what the product was?

14 A. I don't.

15 Q. In some of your documents I've seen the term
16 that you offer Sempris a certain "position."

17 A. Uh-huh.

18 Q. Can you -- can you explain what -- what that
19 term means in the telemarketing world?

20 A. Sure. Well, Sempris is our lead-in offer.
21 It's basically what we offer to the customers that we
22 contact. So they are not considered an upsell, they are
23 considered the lead-in product, which I guess you guys
24 would consider as first position.

25 Q. Okay. And you used the word "upsell." What

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1 do you mean by that? Is that -- well, let me just ask
2 that.

3 A. If somebody purchases Budget Savers, then we
4 will offer the customer another product, which is called
5 an "upsell."

6 Q. Would that also be considered "second
7 position"?

8 A. Yes.

9 Q. What is your approximate rate of closing
10 someone that you call on behalf of Sempris, as a -- as a
11 customer for Sempris?

12 A. As a customer for Sempris? So you're asking
13 me what -- what rate from someone we contact?

14 Q. (Moves head up and down.)

15 A. Probably 30 percent; between 20 and 30.

16 Q. And in that are you including people who are
17 called -- calls placed, but that you don't -- people
18 don't pick up?

19 A. No, that would not be a contact.

20 Q. That's not a contact.

21 So of the people who are actually spoken to
22 live there --

23 A. Right.

24 Q. -- you -- you -- you convert about 20 to 30
25 percent --

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1 A. Correct.

2 Q. -- of those into customers?

3 How do you --

4 A. That's if they are happy with the product that
5 they ordered and we confirm their order first; and if
6 they are happy with that, then we go on to the product.

7 Q. I -- I'm not sure what you mean by -- by that.
8 Could you explain?

9 A. For instance, we're calling them to confirm
10 their initial order.

11 Q. Okay.

12 A. And if they have questions about the initial
13 order or any problems, then we take care of that in
14 customer service.

15 Q. Okay. And where do you get the phone numbers
16 to call people on behalf of Sempris?

17 A. Well, I have many partners that I provide a
18 service for, order-confirmation service.

19 Q. And is Stompeez one of those, I guess,
20 partners or customers?

21 A. Yes.

22 Q. Are they still a partner of yours?

23 A. Yes, I believe so.

24 Q. And are you still working with Sempris?

25 A. Yes.

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1 Q. And are you still calling people whose phone
2 numbers you get via --

3 A. If they're a customer of the client, correct.
4 If they purchase something from Stompeez, for
5 instance --

6 Q. Yes.

7 A. -- then we call back on behalf of Stompeez and
8 verify their order.

9 Q. And in every one of those calls is an attempt
10 made to market Sempris's product?

11 A. Again, not every one; depending on the status
12 of their order. If they're happy with their order, then
13 yes; if there's an issue with their order, then no. But
14 majority, yes.

15 Q. How do you -- how do you -- you have other
16 clients other than Sempris --

17 A. Right.

18 Q. -- obviously. And how do you assign -- how do
19 you make calls where your call-center representatives
20 know that they're supposed to be promoting Sempris
21 products? How -- you know, is there a campaign of calls
22 made where a certain number of your call-center
23 representatives are told, "This is the script you're
24 using today"?

25 A. Okay. Well, everybody sells Sempris in the

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1 call center, so -- and then after Sempris is where the
2 other companies would come in as an upsell. So we offer
3 Sempris to everybody first.

4 Q. Every call that you make?

5 A. Every -- yes, every -- every order
6 confirmation that -- that is good.

7 Q. But what about your -- your other clients
8 like -- or partners like Sempris?

9 A. So after I sell them Sempris; or if I offer
10 them Sempris and they don't want it, we offer another
11 product.

12 Q. I see. So Sempris -- and does Sempris remain
13 your No. 1 product?

14 A. The first -- yeah, the first product. Sempris
15 and I have a great relationship outside of this.

16 Q. So what percentage of your revenue would you
17 say is attributable to your relationship with Sempris?

18 A. Fifty percent.

19 Q. And is the other approximately 50 percent from
20 second-position customers?

21 A. Yes.

22 Q. How many second-position customers does
23 Quality have?

24 A. What do you mean?

25 Q. Well, how many other products -- or how many

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1 other companies' products do you offer in that second --

2 A. Three, right now; we're working with three.

3 Q. And who are they?

4 A. One of them is Affinion, we have two of their
5 products; and another one is Hydroxatone, which is
6 Atlantic Coast Media.

7 Q. And I think you said that you had a third?

8 A. No, those are the products we sell; whether
9 they go in second or third it's --

10 Q. No, no, I mean a third, other second-position
11 company whose products you offer?

12 A. We offer these products to second and third.
13 So there's three of them. So we may offer the second
14 position as an Affinion club; and then third, Atlantic
15 Coast Media.

16 Q. I see. And what is Affinion's product that
17 you're promoting?

18 A. It's a buyer's shopping-travel type of club
19 with different benefits.

20 Q. And how about Atlantic Coast Media?

21 A. It's a skin cream, antiaging cream.

22 Q. Which is Hydroxacone?

23 A. Hydroxatone.

24 Q. Tone.

25 And how does the -- how does Quality get paid

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1 by Sempris?

2 A. By wire, weekly.

3 Q. What is the -- what are the sort of terms of
4 your payment?

5 A. They -- he pays me for every customer I send
6 to him.

7 Q. And how much are you paid her customer?

8 A. \$30.

9 Q. And is that paid on a -- immediately on
10 transfer, or do you -- does the customer have to stay
11 with Sempris for a given amount of time?

12 A. No. For every customer I send; and he gets to
13 keep the reoccurring revenue.

14 Q. And by "he," you mean Sempris?

15 A. Yes.

16 Q. And when you say -- when you -- you've said
17 "he" a few times, I pre --

18 A. I mean George, I'm sorry.

19 Q. That's okay. George -- and that's George
20 Richards?

21 A. Yes.

22 Q. And what is George's title with Sempris?

23 A. President, CEO, founder.

24 Q. And --

25 A. I'm not sure.

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1 Q. And has Mr. Richards been with Sempris since
2 2005?

3 A. Yes.

4 Q. In your amended answers to interrogatories,
5 Quality said that Mr. Richards knew that you were using
6 an automated telephone dialing system?

7 A. Correct.

8 Q. And did you have direct conversations with
9 Mr. Richards about that?

10 A. Absolutely.

11 Q. Can you say when you would have had those
12 conversations?

13 A. No. But in order to market for Provell or
14 Affinion or anybody, you have to explain the way you are
15 marketing, what type of customer they will be receiving;
16 we have to abide by their scripting.

17 I do remember him making several phone calls
18 in 2013 when the rules were changing, and we switched to
19 a manual dialer. He called and spoke to myself and my
20 IT team to make sure that we were adhering to the new
21 regulation.

22 Q. And by "new regulations," do you mean new FCC
23 rules?

24 A. I don't know, is it FTC or FCC? Manual
25 dialing I believe is FTC.

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1 Q. And who on your IT team was part of the
2 conversation?

3 A. I don't even remember. I don't remember who
4 was there. '13, it would be a gentleman named Nick
5 Licata.

6 Q. Could you spell that?

7 A. L-i-c-a-t-a, I'm guessing; because he worked
8 there as IT. I'm not sure who else, but he also spoke
9 to a colleague named Scott Roix for me, because he is
10 more familiar with the VICIdial.

11 Q. And did you tell Mr. Richards that you were
12 using a -- the VICIdial system?

13 A. Yes. And we explained how it was made to be a
14 manual dial, which he needed to approve before we moved
15 on.

16 Q. Prior to that did you tell Mister -- did
17 Mr. Richards know that you were using the VICIdial
18 system; that is, prior to the change in the rules?

19 A. Of course.

20 Q. And you say "of course." Why -- why is
21 that?

22 A. Because nobody like Sempris will let anyone
23 market for them if they're not aware of the way they are
24 marketing.

25 Q. And why -- what is the benefit of using an

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1 automatic telephone dialing system, which I'll just call
2 "ATDS" for short? What is the benefit to a company like
3 Quality?

4 A. Rather than dialing this way (indicating)?

5 Q. Uh-huh.

6 A. Speed.

7 Q. And obviously --

8 A. Efficiency.

9 Q. You've obviously been in the -- been in the
10 business for -- the call-center business for a long
11 time. How much -- how many more calls can you make
12 using an ATDS system?

13 A. Than manual?

14 Q. Yeah.

15 A. I don't -- I don't know.

16 Q. And can you just describe for me generally
17 how -- how the VICIdial system works in the call center?
18 Do numbers get called and transferred? Are they routed
19 to call-center people or --

20 A. Right now, or back in 2012?

21 Q. Back before you changed to manual dialing.

22 A. Basically -- I'm not IT, so I don't know
23 mechanically how it works. But I do know that the
24 dialer dials numbers that we put in; and once there's a
25 customer on the phone, that call is sent to an open

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1 representative -- or was sent.

2 Q. And did Sempris know that among the numbers
3 Quality was calling, cellphones was included?

4 A. Yes.

5 Q. And how did they know that?

6 A. He understood that we're working on an
7 existing business relationship with my partners.

8 Q. And how does that lead you to say that he knew
9 that -- that you were calling cellphones?

10 A. Well, he knew what I was doing; and basically
11 if we weren't, the Do Not Call would pretty much wipe
12 out any customer. But we're providing a service for the
13 client and calling on their behalf, so he knew. Did we
14 ever discuss it? I don't know.

15 Q. And --

16 MR. DEVINE: I'm sorry. What was the answer?

17 THE WITNESS: I said, did we ever discuss it?
I don't know.

19 MR. DEVINE: Thank you.

20 BY MR. BRODERICK:

21 Q. Was it Quality's belief that you -- you didn't
22 need to eliminate cellphones from the numbers called
23 because of an established business relationship?

24 A. Yes.

25 Q. And was it Quality's belief that you didn't

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1 need to scrub against the National Do Not Call list in
2 order not to call those numbers because of an --

3 A. Yes.

4 Q. -- established business relationship?

5 And did Sempris ever ask you to scrub the
6 numbers against the National Do Not Call list?

7 A. No.

8 Q. In fact, didn't you remove a requirement that
9 you would scrub against the National Do Not Call list
10 from a draft contract with Sempris?

11 A. No; that was when we first started in 2005, we
12 were adhering to the Do Not Call -- I don't even know if
13 there was a Do Not Call back then.

14 THE WITNESS: When did the Do Not Call
15 Registry start?

16 BY MR. BRODERICK:

17 Q. 2003.

18 MR. EPSTEIN: Yeah, prior to 2003.

19 A. 2003? So, yes, we didn't stop -- we stopped
20 adhering to the Do Not Call when we started order
21 confirmation. Prior to that, we always scrubbed against
22 the Do Not Call.

23 BY MR. BRODERICK:

24 Q. And how many sources of -- well, in terms of
25 order-confirmation clients of Stompeez, how many of

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1 those are there?

2 A. Stompeez clients?

3 Q. Not -- excuse me -- for Quality -- how many --
4 how many clients like Stompeez --

5 A. Like Stompeez?

6 Q. -- does Quality have?

7 A. 80 to 100.

8 Q. And calls on behalf of all of those clients --
9 well, strike that.

10 When did you start -- when did Sempris get
11 into first position for Quality's outgoing calls?

12 A. I believe he was always in first position; but
13 I know I had signed a contract adhering to first
14 position, but I -- I don't remember the dates.

15 Q. Okay. Well, I'll show you the contracts and
16 maybe we can fill in some of those dates.

17 So for all 80 to 100 of these sources --

18 A. Uh-huh.

19 Q. -- of telephone numbers, Sempris is in first
20 position on all of those calls?

21 A. It's not just telephone number, it's also the
22 product they purchased --

23 Q. Sure.

24 A. -- where they want it sent.

25 (Exhibit 2 marked for identification.)

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1 BY MR. BRODERICK:

2 Q. I'm showing you what's been marked as
3 Exhibit 2, and it's Bates-stamped Sempris 519 through
4 Sempris 524.

5 Do you recognize that document?

6 A. Yes.

7 Q. And what is it?

8 A. It's a proposal.

9 Q. And it's an e-mail to George Richards at
10 Sempris?

11 A. It's from George Richards.

12 Q. It's from George Richards. So this is his
13 proposal to you?

14 A. Correct.

15 Q. And it's dated February 2, 2010, at 8:03 p.m.?

16 A. Correct.

17 Q. Was this a renegotiation of an already
18 existing contract?

19 A. Yes.

20 Q. And I just want to understand some of the --
21 some of the terms. You say, "First position in all
22 rooms" -- well, he says that. What does he mean by
23 "rooms"?

24 A. It's -- it's just we divide up the call center
25 into different quads, just to separate them. It makes

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1 it easier to manage.

2 Q. And so in Paragraph 2 in Mr. Richards' e-mail
3 he says, "Increased per-sale comp as follows." Is that
4 per-sale compensation to Quality?

5 A. Yes.

6 Q. And it says, "Additional 1.50 per sale on all
7 30-day trials, with 24.95 per month after the trial."
8 Only the -- only the additional \$1.50 is going to
9 Quality there. Correct?

10 A. This is a proposal. It's not a --

11 Q. Just what he -- what -- what -- what he means
12 though. I'm just trying to understand what the --

13 A. That's what he's proposing.

14 Q. And can you explain why there's a -- a dollar
15 difference for a 15-day trial as opposed to a 30-day
16 trial?

17 A. Because he makes more money on a 15-day trial
18 rather than a 30-day trial.

19 Q. Because they go on to actual paying quicker?

20 A. Yes. He can charge the card quicker. It's
21 not a benefit for me.

22 Q. And then in Paragraph 3, Mr. Richards writes,
23 "This assumes you continue to average about 70 percent
24 of your sales as order confirmation." Could you explain
25 what that means?

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1 A. I have no idea, to be honest with you. Okay.
2 So -- so this was when we were transitioning to order
3 confirmation.

4 Q. And that was in 2010?

5 A. Yes.

6 Q. Are you -- you were already doing order
7 confirmation at the point this e-mail was written, do
8 you think?

9 A. It looks like it.

10 Q. Could you tell me what -- what would be the --
11 the other 30 percent of sales that are not order
12 confirmation?

13 A. In 2010 we were doing other types of
14 marketing.

15 Q. What kind of marketing was that?

16 A. We were doing -- we weren't doing the same
17 thing we're doing now. We were doing a different sort
18 of outbound where we had marketing partners and we did
19 not have the product that they purchased. We didn't
20 know what they purchased. It wasn't order confirmation;
21 so we had the information without the -- without the
22 item they purchased, which made it more difficult.

23 Q. How did it make it more difficult?

24 A. Because we don't know what they bought.

25 Q. In -- were you selling -- were you selling

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1 Sempris in 2010 as --

2 A. Yes.

3 Q. Let me -- let me finish. The -- the nonorder
4 confirmation sales, the other 30 percent, as of
5 February 2, 2010, that was not order confirmation, were
6 those sales of Sempris products?

7 A. I don't remember.

8 Q. Would there be a way that we could figure that
9 out --

10 A. Yes.

11 Q. -- from documents?

12 A. I don't know from the documents. I'd have to
13 probably check into it myself.

14 Q. And is there somebody at the company who would
15 know that?

16 A. My CFO should know that.

17 Q. And your CFO's name is what?

18 A. Scott Farnam. He hasn't been with the company
19 that long.

20 Q. Was he with the company in 2010?

21 A. No.

22 Q. Did you have a CFO --

23 A. Yes.

24 Q. -- in 2010?

25 A. Mike Capito.

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1 Q. I'm sorry, Mark --

2 A. Mike Capito.

3 Q. Mike Capito.

4 In Paragraph 6 it says, "As to only getting
5 paid on 90 percent of sales, my reporting shows we're
6 averaging 95 percent or so. See attached file from
7 Mike. We can discuss ways to shave a half percent or so
8 off of this." Can you -- can you explain what he's
9 referring to there?

10 A. Basically, if it's a duplicate member and
11 Sempris already has the member and they're already in
12 the club, they -- they don't pay us on those. So they
13 used to run 2 to 3 percent.

14 So at this time I asked him about -- we were
15 only paid on 90 percent; and he's saying he's showing 95
16 percent. It's just an accounting discrepancy.

17 Q. So was there a -- so did Quality not get paid
18 on a flat percentage basis to account for the fact that
19 some people were already --

20 A. No.

21 Q. -- members of Sempris's club?

22 A. It's different every week. One week it could
23 be 1 percent, the next week it could be 6.

24 Q. Okay. But it wasn't -- it wasn't baked into
25 the contract --

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1 A. No.

2 Q. -- you normally got paid that?

3 If you would just turn to Page 520, the
4 attachment for this e-mail. I just want to understand a
5 few of the terms on this spreadsheet. What does the
6 term "gross loads" mean to you?

7 A. That means everything that we sent to them,
8 all the customers.

9 Q. Okay. And how about "delete"?

10 A. For some reason we were not paid on 2,336; I'm
11 looking at the month of June.

12 Q. Would that be because of they were already
13 customers?

14 A. Correct.

15 Q. Were there any other reasons you wouldn't get
16 paid for an uploaded customer?

17 A. No.

18 Q. So "net loads" is just "gross" minus
19 "deletes"?

20 A. Correct.

21 Q. And then the next page, 521. Could you tell
22 me what that spreadsheet shows, where it says, "Mixed
23 percentage," "Monthly," "30-day," "30-day OTY"?

24 A. I'm not very -- I'm not sure.

25 Q. Is that 30-day trials? Would that be

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1 your ...

2 A. I don't know.

3 Q. And the acronym "OTY," do you know what that
4 means?

5 A. I don't.

6 Q. Okay.

7 MR. BRODERICK: That's 3.

8 (Exhibit 3 marked for identification.)

9 BY MR. BRODERICK:

10 Q. So I'm showing you what's been marked as
11 Exhibit 3, and this is from your production -- from
12 Quality's document production in this case; and it's
13 Bates No. QSR 10366 through 10399. It appears to be a
14 collection of contracts with Sempris. Do you -- do you
15 recognize -- you can take your time and look through it.

16 A. Do I recognize the contract?

17 Q. Yeah, do you recognize these documents?

18 A. Yes.

19 Q. And the first page, QSR 10366, appears to be
20 an e-mail from you to George Richards on January 18,
21 2011?

22 A. Correct.

23 Q. And it says -- you say, "Here's a redline
24 version, sorry it took so long." Can you turn to the
25 next page? Were you the one who redlined this

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1 contract?

2 A. No.

3 Q. Who did that?

4 A. My attorney.

5 Q. Who was that?

6 A. At that time I don't remember who I sent it
7 to.

8 Q. Okay. And --

9 A. Probably Robert -- Robby.

10 Q. Is that Robby Birnbaum?

11 A. Yes.

12 Q. And can you look under -- on Page 10367 --

13 A. Uh-huh.

14 Q. -- and you -- the -- the mark -- the section
15 under Paragraph 1, Subparagraph A.

16 A. Uh-huh.

17 Q. And is that -- that reflects an edit to the --
18 to the contract --

19 A. Correct.

20 Q. -- that had been sent to you by Sempris?

21 A. Yes.

22 Q. And is the -- the stricken language is,
23 "Company specifically agrees that at the beginning of
24 each telemarketing campaign and every 31 days for the
25 duration of the campaign, it will obtain the National Do

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1 Not Call," open paren, " ('DNC')," paren, close quote,
2 "that" -- excuse me -- close quote, paren, "Registry
3 maintained by the Federal Trade Commission and
4 applicable state DNC registries, and remove from calling
5 list for each campaign those telephone numbers that
6 appear in the DNC registries."

7 So by this you're telling Mr. Richards that
8 you're not going to scrub against the DNC list.

9 Correct?

10 A. Because we had agreed to the order
11 confirmation.

12 Q. And did he agree that "order confirmation"
13 meant you did not have to --

14 A. Yes.

15 Q. -- strike -- you did not have to scrub against
16 the DNC list?

17 A. Correct.

18 The customers that we contact, most of them
19 are online; and there's a privacy policy that explains
20 to them that a third-party will be contacting them.

21 Q. Did Quality review the privacy policies of all
22 80 to 100 --

23 A. Yes.

24 Q. -- clients?

25 A. Yes.

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1 Q. Who did that?

2 A. Myself and my lawyer ... lawyers.

3 Q. And when did you do that?

4 A. I don't remember. Prior to order confirmation
5 and during; I still do that now.

6 Q. On Page QSR 10369 --

7 A. Yes.

8 Q. -- you have one edit under 3(A), "Striking,"
9 "And in compliance with the confirmation and
10 verification criteria as outlined in Exhibit B in this
11 agreement." Can you tell me why you struck that
12 language?

13 A. I have no idea.

14 Q. And the same question for Subparagraph C,
15 which is stricken?

16 A. I'm not sure. My attorneys looked at this and
17 they redlined it. But George is very smart; he would
18 not sign an agreement that didn't meet all of his
19 requirements.

20 Q. And there's nothing in this agreement that
21 requires you to eliminate cellphones from any numbers
22 you call. Correct?

23 A. I don't believe so.

24 Q. If they had asked you to do that, are you
25 capable -- is Quality capable of eliminating

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- 1 cellphones?
- 2 A. Of course.
- 3 Q. And how do you do that?
- 4 A. Through IT, scrub them. The reason I still
- 5 work with Sempris is we are the only compliant company
- 6 that's still left; and we've been around for 22 years.
- 7 So we don't violate rules. We do everything we need to
- 8 do in compliance, which is why I've never had any issues
- 9 or any problems.
- 10 Q. So Quality has -- has never been sued for
- 11 telemarketing?
- 12 A. No.
- 13 Q. Not even on an individual basis?
- 14 A. Individual basis, not ever by a government
- 15 agency; just nuisance suits like this one.
- 16 Q. What about the suits brought by the Edelson
- 17 firm?
- 18 A. The Edelson firm?
- 19 Q. Is Quality a party to other lawsuits right
- 20 now?
- 21 A. No.
- 22 MR. EPSTEIN: Not right now, no.
- 23 A. They dropped.
- 24 BY MR. BRODERICK:
- 25 Q. They dropped? Did it settle?

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1 A. We didn't settle. They dropped.

2 Q. They dropped you as a defendant, being
3 Quality; or no?

4 A. (Moves head up and down.)

5 MR. EPSTEIN: They dismissed the lawsuits.

6 THE COURT REPORTER: I'm sorry?

7 MR. EPSTEIN: They dismissed the lawsuits.

8 THE COURT REPORTER: Thank you.

9 BY MR. BRODERICK:

10 Q. Where were those lawsuits filed?

11 MR. EPSTEIN: If you remember.

12 A. I don't remember.

13 BY MR. BRODERICK:

14 Q. So that change, dropping the requirement of
15 scrubbing against the National Do Not Call list, made it
16 into the final executed contract. Correct?

17 A. I'm not sure. Is this the final executed
18 contract?

19 Q. That -- that one is. We'll get there.

20 A. I don't know which one is.

21 (Exhibit 4 marked for identification.)

22 MR. DEVINE: Is this 4?

23 MR. BRODERICK: Yes.

24 BY MR. BRODERICK:

25 Q. So I'm showing you what's been marked as

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1 Exhibit 4, Bates-numbered QSR 32 through 57; and this is
2 from Quality's document production in the case. It
3 seems to be a series of contracts between Quality and
4 Provell. Just look at those documents.

5 So do you recognize these documents?

6 A. Somewhat.

7 Q. Why do you say "somewhat"?

8 A. Well, I did not sign this document, my CFO
9 did; but the contract is fine.

10 Q. And is -- so was Mr. Capito authorized to sign
11 that on behalf of Quality, at QSR 38?

12 A. Yes.

13 Q. And at the back of the packet, at QSR 51, it
14 says, "Program sales agreement." Do you know if that
15 was the first contract -- signed contract with Provell?
16 It's got your signature at QSR 56.

17 A. I don't know.

18 Q. But is 2 -- 2005 is roughly when you started
19 working for --

20 A. Yes.

21 Q. And in the -- the first contract in the
22 packet, does the contract require Quality to scrub
23 against the National Do Not Call list?

24 A. No.

25 Q. But you do --

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1 A. We agree that we will take any internal DNC
2 requests; which means any customer that does not want to
3 be called, we have an internal Do Not Call list.

4 Q. And does Sempris provide you with any numbers
5 from its own internal Do Not Call list?

6 A. I'm not sure. I don't believe so. That would
7 also be an IT question.

8 Q. Okay. And Subparagraph C on QSR 32, it says
9 "The company," meaning Quality, "specifically agrees
10 that it will digitally record each verifier portion of
11 sales call in which a consumer agrees to enroll in any
12 program for quality-assurance purposes. Company shall
13 provide Sempris no-cost access to all verification
14 recordings in a mutually-acceptable format within 24
15 hours of the sale of the program."

16 A. Yes.

17 Q. And did Quality do that?

18 A. Absolutely.

19 Q. And the portion of the call that's recorded,
20 what is that?

21 A. Verification.

22 Q. Well, what is the verification; saying, "You
23 agree you want to enroll" --

24 A. Yes.

25 Q. -- confirming credit card --

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1 A. Yes, it confirms; it actually acquires the
2 credit card at that point. And everything is recorded
3 for Budget Savers, as well as any other upsell; and we
4 keep the recordings forever.

5 (Exhibit 5 marked for identification.)

6 MR. BRODERICK: Richard (handing).

7 BY MR. BRODERICK:

8 Q. I'm showing you what's been marked as
9 Exhibit 5; and it's Bates-numbered Sempris 551 through
10 Sempris 553. And this appears to be an e-mail exchange
11 between you and George Richards.

12 Can you tell me who Vertrue is?

13 A. Another company I used to market for, like --
14 like George's company.

Q. And when did you market for them?

16 A. I can't recall which years -- what year it
17 was, but ...

Q. Was it prior to 2010?

19 A. Yes.

20 Q. And were you working with them in 2010, or
21 no?

22 A. I don't know.

23 Q. What does Vertrue sell?

24 A. Same -- same -- same thing as George; and
25 basically we were just talking about problems that they

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1 were having. Looks like basically just some gossip
2 about Vertrue.

3 Q. Who is Paymentech?

4 A. Paymentech is the company that Vertrue used to
5 charge credit cards. They're one of the biggest
6 companies in the industry.

7 Q. And can you tell me what -- what the "16-digit
8 capture rule" is that's ...

9 A. The "16-digit capture rule" means that you
10 have to capture the credit card.

11 Q. And by "capture," what does that mean?

12 A. Ask the client for the credit card, the
13 customer.

14 Q. Do you have to get the month and year of
15 expiration?

16 A. Yes.

17 Q. And the code on the back?

18 A. No.

19 Q. You don't have to get the code on the back?

20 A. No, not -- back then we didn't.

21 Q. Okay. And who is Encore?

22 A. Encore is another company who -- used to be
23 another company in the same space.

24 Q. Same space as --

25 A. Which would be competitive with Sempris.

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1 Q. With Sempris.

2 And who is "the Goldstein woman running around
3 like Chicken Little"?

4 A. She's a lawyer.

5 Q. Who is she a lawyer for?

6 A. I have no idea.

7 Q. And is she somebody who works in the
8 telemarket --

9 A. She used to work in the telemarketing
10 industry. I don't know if she does anymore.

11 Q. And what was -- what is the change? Did you
12 used to be able to just capture the last four digits
13 or ...

14 A. I don't remember, but I believe that we used
15 to -- we didn't have to capture the entire credit card.
16 If we were working with Vertrue ... I don't remember. I
17 don't remember. But we didn't have to capture the full
18 credit card at one time.

19 Q. What are -- what's your understanding of the
20 term "negative option billing"?

21 A. I don't do any billing. Where are you
22 looking?

23 Q. Here, I'll show you this.

24 (Exhibit 6 marked for identification.)

25 MR. DEVINE: It's the same one.

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1 MR. BRODERICK: Same twice.

2 A. I don't remember why they used to call it
3 "negative option." I really -- I don't remember why
4 they used to call it "negative option."

5 BY MR. BRODERICK:

6 Q. And --

7 A. It really, I think, just means "continuity";
8 but I'm not sure.

9 Q. Is there a chance that it means "negative
10 option," meaning you have to decline to renew?

11 A. I don't -- I don't know.

12 Q. You don't know, okay.

13 And how about the reference here to
14 "cardholder data privacy/sharing rules"? Do you know
15 what they -- Mr. Richards is referring to there?

16 A. Yes. Basically the same -- the same thing as
17 the 16-digit.

18 Q. And did -- well -- and did you have a
19 follow-up conversation with Mr. Richards about this?

20 A. In 2010?

21 Q. Yes.

22 A. I don't remember.

23 Q. How often do you speak to Mr. Richards in an
24 average week?

25 A. We normal -- not often. We normally meet at

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1 least once a year in person; and occasionally we'll talk
2 on the cellphone. But if I have any questions, I
3 normally go to one of his people. And really, my people
4 work with his people and --

5 Q. So you're the boss?

6 A. Yeah.

7 Q. And where do you typically meet in person on
8 these annual meetings?

9 A. The last few times we've met in New York.

10 Q. Do you meet at a conference, or is it a --

11 A. He came to New York. I go back and forth; I
12 live in New York also. We meet at conferences.

13 Q. But do you go to New York specific -- or does
14 he come to New York specifically to meet with you?

15 A. No. I don't believe so. I don't know if he
16 had other meetings, but I believe he did.

17 Q. Do you meet with him with other people from
18 your company?

19 A. I have.

20 Q. Who are those people who have attended your
21 in-person meeting?

22 A. Debbie Rhodes, my assistant.

23 Q. Okay.

24 A. Rita DePalma, she was with me for lunch in
25 New York.

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1 Q. What is her title?

2 A. She was the president, but she no longer works
3 for me; but we still work together.

4 Q. Where does she work now?

5 A. She works at Augeo Marketing.

6 Q. Do you know if Sempris has any other companies
7 that it works with in a similar capacity as Quality?

8 A. Do I know if they do?

9 Q. Yes.

10 A. Yes.

11 Q. And --

12 A. I don't know who he works with anymore. He
13 used to work with all of my competitors. He does not
14 and has not in a very long time.

15 Q. When you say "very long time," how long?

16 A. Couple of years, I guess.

17 Q. In 2010 was he working with --

18 A. I don't know.

19 Q. -- competitors?

20 A. I don't know. But he always told me because
21 we were so good and compliant, that I was the only
22 marketer that he'd work with, as far as doing order
23 confirmation.

24 Q. Did you have specific conversations with
25 Mr. Richards about order confirmation ... well, that

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1 your calls were based on order confirmation?

2 A. Yes.

3 Q. And did you have conversations with him about
4 the fact -- about your belief that because you were
5 doing an order confirmation, you didn't have to scrub
6 against the DNC list?

7 A. Yes.

8 Q. And did you have conversations with
9 Mr. Richards that -- about your belief that because you
10 were doing order confirmation, you were permitted to
11 call cellphones using an ATDS?

12 A. I don't recall; but Mr. Richards is very
13 smart, and he would talk to his counsel before we made
14 any concrete decisions. His counsel would speak to my
15 counsel.

16 Q. Who is Mr. Richards' or Sempris's counsel,
17 when you say -- in that case?

18 A. I don't remember.

19 Q. It's not Mr. Devine --

20 A. I don't remember.

21 Q. -- to your knowledge? Okay.

22 (Exhibit 7 marked for identification.)

23 BY MR. BRODERICK:

24 Q. I'm showing you what's been marked as
25 Exhibit 7, and that's Sempris 561 through Sempris 566.

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1 A. Uh-huh.

2 Q. And in the part of the e-mail exchange,
3 May 13, 2010, at 10:34, you see where it says, "One of
4 our very large clients just heard from Vertrue that they
5 had the Visa meeting and the new rules do not apply to
6 phones"? Do you know what that's in reference to?

7 MR. DEVINE: I'm going to just interpose an
8 objection. Ms. Mercuris -- obviously, Mr. Richards
9 told her something; and if she recalls it, she
10 can -- she can testify to that. But the question,
11 in my view, asks Ms. Mercuris to get into the mind
12 of my client, Mr. Richards; and that's something
13 that she's not competent to testify about.

14 MR. EPSTEIN: He's just presumably asking her
15 to tell you what she understood by it, if she
16 has --

17 MR. BRODERICK: Yeah --

18 MR. EPSTEIN: -- any understanding at all.

19 MR. BRODERICK: -- if she -- I just want her
20 understanding, obviously. But she's -- this is an
21 e-mail exchange she was part of, so I'd think that
22 she understood what he was saying, the words that
23 he was typing to her.

24 MR. DEVINE: If she knows.

25 MR. EPSTEIN: Take it that she read it; but

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what her understanding is, she can tell us if she has one.

A. I don't recall.

4 MR. BRODERICK: Okay. Well, just for the
5 record, I think I'm going to ask for just -- an
6 objection is sufficient to preserve whatever
7 objection you want to make, and I don't want sort
8 of speaking objections. It's sufficient to -- it
9 will preserve all your objections.

10 BY MR. BRODERICK:

11 Q. And in response to that, it seems like you --
12 you came back and said, "Not true. I had lunch with him
13 yesterday. I'm in a conference in San Diego. I'm
14 talking to someone very senior." Who -- do you remember
15 who that was?

16 A. I don't remember.

17 (Exhibit 8 marked for identification.)

18 BY MR. BRODERICK:

19 Q. Do you recognize this document?

20 A. No. I'm reading it -- reading it to catch
21 myself up.

22 O. Okay.

23 A. Okay.

24 Q. Do you remember what this exchange was
25 about?

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1 A. Yes.

2 Q. And what -- what -- what -- what is he -- what
3 is Mr. Richards talking about to you?

4 A. He's basically addressing the Rockefeller
5 ruling. And I -- I was looking at another company who
6 was offering me more money to market with them, and he
7 was basically trying to make me do otherwise.

8 Q. Okay. What is the -- what is the Rockefeller
9 ruling?

10 A. Well, I don't know exactly the rule; but it's
11 a ruling that came into effect which affected the Web --
12 continuity on the Web, and how it was marketed.

13 Q. I'm not -- what do you mean by "continuity on
14 the Web and how it was marketed"?

15 A. Well, you can look up the Rockefeller ruling.
16 I really don't know how to explain it to you except that
17 marketing practices were changed, after that ruling, on
18 the Internet, the way that they were allowed to market.

19 Q. And what -- is Vertrue the company that was
20 trying to get you to market their products?

21 A. Yes.

22 Q. And were they some -- how -- were they using
23 the 16-digit capture rule against Sempris in some way?

24 A. I don't remember, but I believe they were
25 saying that "It's coming, you're going to have to start

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1 capturing"; as well as George, but George was saying
2 that it's not going to adhere to phones, which means it
3 wouldn't -- it wouldn't affect my sales or my company.

4 Q. And was there -- was there a problem with the
5 way that you were getting data from --

6 A. No.

7 Q. -- Stompeez or something that you didn't have
8 proper --

9 A. This is just an overall ruling from --

10 THE WITNESS: What is it? FTC or FCC, the
11 Rockefeller ruling --

12 A. -- I don't remember, which changed marketing
13 practices.

14 (Exhibit 9 marked for identification.)

15 BY MR. BRODERICK:

16 Q. I'm showing you what's been marked Sempris 585
17 through 587.

18 MR. DEVINE: Exhibit 9? This is 9?

19 MR. BRODERICK: Oh, yes, yes, sorry. No, it's
20 587.

21 MR. DEVINE: Okay. All right. No, no, I'm
22 sorry. Just want to make sure of my numbering
23 sequence.

24 MR. BRODERICK: Got it.

25 BY MR. BRODERICK:

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1 Q. Do you remember this issue?

2 A. I don't.

3 Q. Do you see where you say in -- on Wednesday,
4 May 19, 2010, in an e-mail to George Richards, "Hi
5 George. I'm really not happy with the way you guys
6 handled this. It caused them to go to the owner of the
7 data provider and threaten all kinds of legal action.
8 Please make sure this customer is refunded for all five
9 charges; and I told the data provider I would take care
10 of this. The way your customer service answered really
11 made the customer more upset than if you would have just
12 canceled it and not sent the recording. The customer
13 sent the recording to the data provider and is really
14 upset. Thank you. Let's discuss how we can prevent
15 this in the future."

16 A. So this was a customer-service issue on his
17 part. It looks like he charged the customer,
18 accidentally, five times.

19 Q. And then sent the recording to the customer?

20 A. I guess. That's what it says.

21 Q. And did -- did you -- would -- if -- if you
22 got a complaint, would you forward it on to Sempris,
23 typically, about a customer who was not happy about
24 getting billed?

25 A. Absolutely.

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1 Q. And if you got complaints about people who are
2 not happy about getting called, did you share those kind
3 of complaints with Sempris?

4 A. I don't believe so.

5 MR. BRODERICK: You can look on with me, I
6 only have one copy.

7 MR. DEVINE: Okay.

8 (Exhibit 10 marked for identification.)

9 BY MR. BRODERICK:

10 Q. I'm showing you what's been marked as
11 Exhibit 10, and it's QSR 10 through QSR 20. Do you
12 recognize that document?

13 A. No.

14 Q. It was produced by Quality in response to
15 discovery, and it's labeled the "Quality Resources
16 complaint chart."

17 A. I have a compliance department that handles
18 complaints.

19 Q. Who's in your compliance department?

20 A. Kraig Allen.

21 Q. That's "Kraig" with a "K"?

22 A. Yes.

23 Q. Anybody else?

24 A. Yes. Darren Roscoe, and our whole customer
25 service and quality control.

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1 Q. How many people work in your call center?

2 A. Including quality control?

3 Q. Why don't we say people who are making phone

4 calls first.

5 A. About 150, day and night.

6 Q. And do you have -- how many locations do you

7 have?

8 A. One.

9 Q. Just one?

10 A. (Moves head up and down.)

11 Q. Where -- where is that?

12 A. Clearwater.

13 Q. Clearwater. And, then, how many people in

14 customer service?

15 A. I'm guessing 25; 20 to 25.

16 Q. And, then, how many other employees?

17 A. I really don't know. I'd say we probably have

18 a total of 375, 400. It changes.

19 Q. Okay. On -- on that chart, do you know, on

20 the last column for "Resolution" --

21 A. Uh-huh.

22 Q. -- is --

23 A. Resolved.

24 Q. Resolved. "R" is "resolved." "UR," is that

25 "unresolved"?

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1 A. I'm not sure, but I would assume so. But all
2 of our complaints are all -- are all resolved.

3 Q. Do you know what "AJR" means on Page 11, the
4 second page of the exhibit?

5 A. No, I don't.

6 Q. How about "AR"?

7 A. No, not sure.

8 Q. Would Kraig Allen be the best person to ask
9 about the meaning of those?

10 A. Yes.

11 Q. Do you know what types of complaints are being
12 logged on this chart?

13 A. No, this was old. We -- when did you -- what
14 year is this from?

15 Q. Date of -- well, "Date of inquiry" -- the
16 first one is 5/2/2008.

17 A. Yeah, these are old.

18 Q. And the last is 4/24/2013; it's 523 line
19 entries.

20 A. We have zero complaints right now, so this
21 would be a Kraig -- a Kraig question; and Kraig came
22 from the Department of Agriculture.

23 Q. Is that the Florida Department of
24 Agriculture?

25 A. The Florida Department of Agriculture,

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1 correct; and ran my compliance.

2 Q. And they're the entity in Florida that's
3 responsible for enforcing telemarketing laws?

4 A. Yes.

5 Q. Was he with you -- when did -- when did he
6 join Quality?

7 A. 2007.

8 MR. BACKMAN: Now be a good time for a short
9 break?

10 MR. BRODERICK: Absolutely.

11 THE WITNESS: Thank you.

12 THE VIDEOGRAPHER: We are now off the video
13 record at 11:30 a.m.

14 (Recess from 11:30 a.m. to 11:43 a.m.)

15 THE VIDEOGRAPHER: We're back on the video
16 record at 11:43 a.m.

17 MR. BRODERICK: 11.

18 (Exhibit 11 marked for identification.)

19 BY MR. BRODERICK:

20 Q. Okay. I'm showing you a document marked as
21 Exhibit 11, which is QSR 13881. It appears to be an
22 e-mail exchange between Mark Ricke of Provell and -- do
23 you know who Mark Ricke is?

24 A. Yes.

25 Q. What is his -- what is or was his title at

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1 Provell?

2 A. Marketing manager.

3 Q. Is he still there?

4 A. I'm not sure.

5 Q. And Sandy Zufall, is she still with Provell?

6 A. Yes, she is Sandy Marina; she got married.

7 Q. Oh, okay. And were you made aware of this

8 particular complaint back in 2010?

9 A. I -- I have no recollection.

10 Q. No recollection. But would a complaint like

11 this get elevated to you --

12 A. No.

13 Q. -- or is this handled below your pay grade?

14 A. It's -- it's normally handled; unless there's

15 a problem, then it would come to me. If it's just about

16 taking somebody off the list or -- anything that's

17 elevated comes to me.

18 Q. Okay. And --

19 A. Do you have the response?

20 Q. We do, yeah, in -- in another e-mail. But I

21 just wanted to focus on the -- the -- the --

22 A. Because it could be a possible of several

23 different things; it could possibly not even be my

24 customer.

25 Q. Do you know who Value -- who is Value Plus?

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1 A. Value Plus was the name of Sempris's program
2 before they changed it to Budget Savers.

3 Q. And Provell had the ability to add people
4 to --

5 A. Absolute -- Do Not Call?

6 Q. Sorry, let me just finish the question.

7 MR. EPSTEIN: Let him finish the question.

8 A. I'm sorry.

9 BY MR. BRODERICK:

10 Q. I know it's been a while since you worked in
11 the business, but just so we have a cleaner record.

12 Provell had the ability to add people to your
13 internal Do Not Call list at Quality. Correct?

14 A. Correct.

15 Q. And in this e-mail it appears that someone is
16 complaining about getting calls on her cellphone. Isn't
17 that correct?

18 A. Yes.

19 Q. Those are calls from Quality, promoting Budget
20 Savers?

21 A. "The clients" ... I'm sorry. What was the
22 question?

23 Q. Is this -- is this someone who's complaining
24 that she's getting inbound calls promoting Budget
25 Savers?

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1 A. Correct. So what we would do is look up that
2 number to see if it was even our customer.

3 Q. And it appears that Mr. Ricke is saying she's
4 getting calls on her cellphone -- right? -- "And we
5 have a customer that is continually getting calls on her
6 cellphone"?

7 A. Again, I don't know. I don't remember. And I
8 don't know how it was resolved. I don't see the answer
9 from Sandy. So it may not have been us.

10 | (Exhibit 12 marked for identification.)

11 BY MR. BRODERICK:

12 Q. A quick question about this Exhibit 12, which
13 is marked as Exhibit C --

14 A. Uh-huh.

15 Q. -- and it was attached as a pleading in this
16 case, in Docket 18-3. Do you know if this was the --
17 when this privacy policy statement was on the Stompeez
18 website?

19 A. Do I know when?

20 Q. Yeah.

21 A. I do not.

22 Q. Do you know how it was retrieved to append it
23 to a court filing?

24 A. No.

Q. Does Quality retain the privacy policies of

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1 websites from which it gets its customer calling data?

2 A. Do we retain it?

3 Q. Yes.

4 A. No.

5 Q. Do you know why Sempris had specific states
6 that Quality is not permitted to call to?

7 A. No.

8 MR. DEVINE: Objection; foundation.

9 BY MR. BRODERICK:

10 Q. Did you have states that you were not
11 permitted to call to on behalf of Sempris?

12 A. Yes.

13 Q. And did they add any states to that, that were
14 not listed in the contract?

15 A. I don't know.

16 Q. Do you know if they added Utah?

17 A. I don't know.

18 Q. Did you ever have any conversations with
19 Mr. Richards about why certain states were?

20 A. Not that I recall.

21 (Exhibit 13 marked for identification.)

22 BY MR. BRODERICK:

23 Q. I'm showing you what's -- a document that's
24 been marked as Exhibit 13, Bates No. QSR 19910-19911.

25 A. Uh-huh.

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1 Q. It appears to be a "Better Business Bureau
2 Complaint Activity Report." Do you know how this -- how
3 Quality came to be in possession of this document?

4 A. I don't. This would be taken care of by
5 compliance.

6 Q. And would Kraig Allen be the best --

7 A. Yes.

8 Q. -- person to talk to?

9 Okay. And it appears to be a complaint --
10 would a complaint like this received by Quality ever be
11 shared by Sempris?

12 A. Just to have their number removed and put on
13 the Do Not Call? Would it be -- would I share it with
14 Sempris?

15 Q. Yes.

16 A. No.

17 Q. And it appears the person's complaining in the
18 first page, saying the calls are going to their
19 cellphone, and they're on the DNC list. Correct?
20 And -- is that right?

21 A. That's what it says.

22 Q. And would Quality's policy be to add this
23 person to your internal Do Not Call list?

24 A. What is the date of this report?

25 Q. Well, it seems like it's 9/30/2010 is when

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1 they say they received -- the Better Business Bureau
2 received the complaint. And then it says you were
3 notified on 10/1/2010.

4 A. Okay. What was the question?

5 Q. Would Quality's policy be to add someone
6 complaining like this to your internal Do Not Call
7 list?

8 A. Absolutely.

9 Q. And the next page is a complaint from a
10 different consumer; and similarly that kind of
11 complaint, that person would be added to Quality's --

12 A. Absolutely.

13 Q. -- Quality --

14 A. Anybody that --

15 Q. Remember to let me finish.

16 A. I'm sorry.

17 Q. It's okay. It's -- it's totally natural in
18 conversation to --

19 A. I know, I'm sorry.

20 Q. -- you know what the question is going to be
21 and you want to answer, but it's sort of an unnatural
22 conversation.

23 A. Normally if people don't want to be called, we
24 put them on the Do Not Call.

25 MR. EPSTEIN: Let's wait for the next

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1 question.

2 THE WITNESS: Okay.

3 Do you have a pen?

4 MR. EPSTEIN: A pen?

5 THE WITNESS: (Moves head up and down.)

6 MR. EPSTEIN: Don't write on these. These are
7 the actual --

8 THE WITNESS: -- exhibits?

9 MR. EPSTEIN: -- exhibits. If you want to
10 write on them, you can write on my copy.

11 THE WITNESS: Okay.

12 MR. EPSTEIN: Do you want a sheet of paper?

13 THE WITNESS: Sure. Thanks.

14 (Exhibit 14 marked for identification.)

15 BY MR. BRODERICK:

16 Q. So I'm showing you what's been marked as
17 Exhibit 14. This is an excerpt of the VICIdial manager
18 manual, Bates-numbered QSR 21647 through QSR 21674.

19 And it's your understanding that the
20 VICIdialer was run in predictive mode up until 2013 by
21 Quality?

22 A. Correct.

23 Q. And you didn't manually dial any calls until
24 you made that change in 2013?

25 A. I believe so.

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1 Q. And can those -- can the VICIdialer store
2 telephone numbers to call?

3 A. Store them? What do you mean by "store them"?

4 Q. Load the numbers onto the system and it's got
5 a list of numbers to dial?

6 A. Yes.

7 Q. And it can be dialed without somebody pressing
8 a button to say, "Please call that number"?

9 A. Not now.

10 Q. Not now; but up in 2013 it could?

11 A. Well, somebody had to -- had to work the
12 dialer. A manager would manage the dialer.

13 Q. But once it was running, it would dial --

14 A. Correct.

15 Q. -- the numbers and route it to available --

16 A. Yes.

17 Q. -- call people?

18 MR. BRODERICK: We didn't need to mark that.

19 MR. DEVINE: Did you not mark that? I'm
20 sorry.

21 MR. BRODERICK: I did. I didn't need to.

22 It's 14.

23 MR. DEVINE: Thanks.

24 MR. BRODERICK: This is 15.

25 (Exhibit 15 marked for identification.)

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1 MR. DEVINE: Thank you.

2 BY MR. BRODERICK:

3 Q. I'm showing you what's been labeled
4 Exhibit 15. It's Sempris 865 through 867. It appears
5 to be an e-mail exchange between you and George
6 Richards. You appear to be discussing the fact that you
7 had hired Adam Hanks, and Mister -- why is it that
8 Mister -- what is the history, if you know, that
9 Mr. Richards is referring to with Adam Hanks?

10 A. Adam Hanks used to work for Mr. Richards.

11 Q. And did he have bad feelings towards
12 Mr. Hanks?

13 A. I don't know. I believe so, according to this
14 e-mail.

15 Q. Well, you say on Page 2, "Don't they say,
16 'Keep your friends close and your enemies closer'?" And
17 you thought "Maybe it's better have him on my side
18 rather than a competitor."

19 Where was he working when you hired him?

20 A. He wasn't. I don't believe he was.

21 Q. Where had he worked prior to --

22 A. Sempris.

23 Q. -- working for you? So he went from Sempris
24 directly to work for you?

25 A. I don't know.

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1 Q. Well, Sempris isn't a competitor of Quality's,
2 is it?

3 A. No.

4 Q. So you're referring to Mr. Hanks as a -- as
5 a -- "it's better than having him as a competitor." Was
6 he working at a competing telemarketing firm?

7 A. He's just got a big mouth, causes problems.
8 He's just not a well-liked guy in the industry.

9 Q. Does he work for you anymore?

10 A. No.

11 Q. How long did he work for you?

12 A. He never really worked for me. He was
13 independent contractor. Basically he would just try and
14 bring deals to me.

15 Q. And what do you know about Mr. Hanks's work
16 history at Sempris?

17 A. Not much.

18 Q. You don't know why he had to leave?

19 A. I just know it didn't end well.

20 Q. I'm showing you what's been marked as --

21 THE COURT REPORTER: Excuse me.

22 MR. BRODERICK: I'm sorry.

23 THE COURT REPORTER: That's okay.

24 (Exhibit 16 marked for identification.)

25 BY MR. BRODERICK:

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1 Q. I'm showing you what's been marked as
2 Exhibit 16, Sempris 868 through 872.

3 On the second page, 869, you say -- you write
4 to Mr. Richards on July 11, 2011, "Hi, George, how are
5 you? Do you have any interest in more volume or another
6 read?" Can you tell me what you mean by that?

7 A. What that means is does he have any interest
8 in selling a second product.

9 Q. Other than Budget Savers?

10 A. Correct.

11 Q. And -- and is that what you mean by -- but
12 "more volume" -- it says, "more volume or another
13 read"?

14 A. Just -- same thing.

15 Q. They're both the same thing?

16 A. (Moves head up and down.)

17 Q. And "a read," is that a different script?

18 A. It's a different product.

19 Q. Can you tell me what the acronym "BINS" is,
20 b-i-n-s?

21 A. Where are you referring to?

22 Q. I'll show you the exhibit, it will probably be
23 easier.

24 (Exhibit 17 marked for identification.)

25 BY MR. BRODERICK:

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1 Q. So --

2 A. A "bin" is a segment of customers that George
3 obviously didn't want. They are known to be not
4 good-paying customers.

5 Q. And does "bin" stand for something?

6 A. I don't know. It's all about billing, which I
7 don't -- I don't do.

8 Q. Okay. So I'm just -- I really don't
9 understand this whole exchange; so if you can just take
10 me through it from the bottom, working up.

11 A. The bottom, where it says "Don't think so"?

12 Q. Well, you say, "Will you be in ERA"; and then
13 you say -- what is ERA? Is that an industry
14 conference?

15 A. It's a conference, yes.

16 Q. And you say to him, "Sounds good. I'd love to
17 speak to you for a few minutes. What's the number in
18 the Naples office?" After which, on September --
19 that -- that's on September 2nd -- then on September 8th
20 Mr. Richards writes, "Cheryl, been thinking about our
21 call. If we gave you a list of bins, could you suppress
22 them after the first sale so that we would only get
23 second-position sales on bins we can bill? You can give
24 the bins we don't want to someone else."

25 A. Okay. What is the question?

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1 Q. Does this mean that if he gives you a list of
2 phone numbers that he doesn't want you to call on his
3 behalf --

4 A. Yes.

5 Q. -- you would give first position to somebody
6 else; and then -- I'm just not sure what this -- how --
7 how does this work, this proposal? What is he asking
8 you to do, to your understanding?

9 A. He's asking me to basically to suppress
10 certain phone numbers out of our data and not give them
11 to him.

12 Q. Okay. And the -- I -- and what is -- what's
13 your understanding of, "so that we would only get
14 second-position sales on bins we can bill"?

15 A. Correct. He wants, basically, the bad-credit
16 people taken out.

17 Q. Okay. Got it.

18 A. That have been a billing problem for merchants
19 previously.

20 Q. And then you respond, "That's what everyone
21 wants me to do. Let me ask you this. Can you send
22 Sandy the bin suppression so I can bump against it and
23 see how many I would lose," meaning how many numbers out
24 of your list that you would then not be calling?

25 A. The percentage (moves head up and down).

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1 Q. And did you, in fact, do that for Sempris?

2 A. No, I don't believe so. I don't remember, but
3 I don't believe so.

4 (Exhibit 18 marked for identification.)

5 MR. DEVINE: Thanks.

6 BY MR. BRODERICK:

7 Q. Does this refresh your -- this is Exhibit 18,
8 QSR 18051. Does this refresh your memory as to whether
9 Utah was added, after the contract with Sempris was
10 signed, as a state not to call?

11 A. Well, he's obviously adding it on the 13th in
12 2011, so it was added, yes, later; unless we were
13 already suppressing it.

14 MR. BRODERICK: I premarked that. Sorry.

15 MR. DEVINE: No, I appreciate it. Thank you.

16 (Exhibit 19 marked for identification.)

17 BY MR. BRODERICK:

18 Q. Okay. So I'm showing you what's been marked
19 as Exhibit 18, QSR 61 through 65.

20 MR. EPSTEIN: How about 19?

21 MR. BRODERICK: Oh, 19, sorry.

22 MR. DEVINE: I'm going to re-mark.

23 MR. BRODERICK: I missed one.

24 MR. EPSTEIN: He thought he was helping you.

25 MR. DEVINE: I know, the curve ball.

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1 BY MR. BRODERICK:

2 Q. And this is a -- the first four pages of --
3 it's a subset of QSR 61 through 1977. Can you tell me
4 what this document represents, if you know?

5 A. Looks like a dialer report.

6 Q. And would that be a dialer report off of the
7 VICIdial system?

8 A. I believe so.

9 Q. When did you start using the VICIdial
10 system?

11 A. I don't remember. Prior to --

12 Q. Prior to 2010?

13 A. Yes.

14 Q. Okay. And were these documents produced to
15 show phone calls placed on behalf of Sempris?

16 A. I'm not really sure what these documents are
17 for, or where you pulled these from.

18 Q. Well, they're from your production. So we
19 didn't -- we didn't pull them.

20 A. I don't know.

21 Q. Who would know about -- more than you about
22 the VICIdial system at Quality?

23 A. My managers --

24 Q. Specific --

25 A. -- and IT.

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1 Q. And who is the head person in IT, if you
2 wanted to get an answer about how the VICIdial system
3 works?

4 A. Well, right now the VICIdial system really
5 doesn't have to do anything because it's manually
6 dialed. And I have different employees than I did back
7 in two thousand and -- I don't remember when we
8 switched.

9 Q. So for the period 2010 to 2013, who was head
10 of IT?

11 A. The dialers -- like I said, the managers ran
12 the dialers.

13 Q. Who were the managers in 2010 and 2013?

14 A. I don't -- I don't remember.

15 Q. You don't remember who was the head of IT
16 then?

17 A. 2010 to 2013? No.

18 Q. Do you have organizational charts --

19 A. Yes.

20 Q. -- at Quality?

21 Do you know if those were produced in
22 discovery?

23 A. I do not.

24 MR. BRODERICK: Now we're up to 20?

25 THE COURT REPORTER: Correct.

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1 (Exhibit 20 marked for identification.)

2 MR. BRODERICK: You ready?

3 THE COURT REPORTER: Yeah.

4 MR. BRODERICK: Sorry.

5 BY MR. BRODERICK:

6 Q. I am showing you what's been marked as
7 Exhibit 20, QSR 21. Do you recognize that document?

8 A. Yes.

9 Q. And what is it?

10 A. A script.

11 Q. And what script is it for?

12 A. For Budget Savers.

13 Q. And is this the script that you used
14 throughout your time working with Sempris?

15 A. For the entire ten years?

16 Q. (Moves head up and down.)

17 A. No.

18 Q. How many different scripts did you use?

19 A. This is an order-confirmation script. In 2005
20 we did not use order confirmation --

21 Q. Was this what --

22 A. -- so they changed from time to time.

23 Q. Is this what you were using from 2010 to
24 2013?

25 A. I don't know.

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1 Q. Did -- who provided you with this script? Did
2 it come from Sempris?

3 A. Sempris would give me a script, and we would
4 adjust it according to what we were doing.

5 Q. And did you have to get approval from Sempris
6 as to the content of the script?

7 A. Yes, in the beginning. But this is a fronter
8 script; it's not a verification script, which is the
9 recording.

10 Q. And you said "fronter script"?

11 A. We go into more -- we go into detail when
12 the -- on the second part of the call. If they're
13 interested in this, then we go into full detail on
14 recording.

15 Q. And where it says in the last paragraph,
16 "before" -- "wait okay before sending"?

17 A. Uh-huh.

18 Q. "Do you have any questions about Budget Savers
19 before I bring them on the line?"

20 A. Uh-huh.

21 Q. "Please hold with me. Okay?"

22 A. Uh-huh.

23 Q. And the -- what would your call-center agent
24 do at that point?

25 A. Transfer them.

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1 Q. And they would transfer them directly to
2 Sempris?

3 A. No. They would transfer them directly to our
4 verification department so we could verify that they
5 want this, and the script was read verbatim, and they
6 accept everything as far as the price and they
7 understand all of the terms on the tape.

8 Q. Okay.

9 A. And then we listen to those tapes; and if it
10 wasn't read verbatim or we feel the customer did not
11 want it, we don't ever charge the customer or give that
12 customer to Sempris.

13 (Exhibit 21 marked for identification.)

14 BY MR. BRODERICK:

15 Q. Okay. So showing you Exhibit 21, QSR 10451 to
16 QSR 10452, and see it's an e-mail from Mark Riche; and
17 you're one of the recipients of it. Can you tell me
18 what the second page is?

19 A. An invoice.

20 Q. And is that a weekly invoice?

21 A. No, this does not look like a weekly invoice.
22 This looks like more of a true-up.

23 Q. And by a "true-up," you mean reconciling how
24 much --

25 A. Reconciling, yes, our data.

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1 Q. And for "total activity," is that about
2 Quality received commissions of \$320,219.50 for what
3 looks like --

4 A. Seven.

5 Q. Sorry?

6 A. Sorry.

7 MR. EPSTEIN: Question?

8 BY MR. BRODERICK:

9 Q. Well, tell me how much -- what is the period
10 of time you're getting paid for -- you're getting paid
11 that amount of money?

12 A. This looks like it's a true-up for seven
13 weeks.

14 Q. Seven weeks. And when you say a "true-up,"
15 have you been paid other than that --

16 A. I'm sorry. I'm sorry. Seven days, not weeks.

17 Q. How much -- how much does -- does Quality make
18 in -- in rough terms in commissions from Sempris in a
19 year?

20 MR. EPSTEIN: What time period?

21 MR. BRODERICK: 2010.

22 A. I don't know.

23 BY MR. BRODERICK:

24 Q. 2011?

25 A. I don't know. I'd have to look at my books.

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1 Q. How about this year?

2 A. I don't know. I look at it weekly, but I
3 don't look at what they pay me per year or -- I don't
4 re -- I don't recall that number. But this is for one
5 week.

6 Q. And is that a -- is that a normal week, since
7 you look at your books on a weekly basis?

8 A. Not anymore.

9 Q. In 2011, was that about --

10 A. Yes.

11 Q. -- a normal week?

12 So in a normal week you'd make roughly
13 \$320,000 in -- in commission in a week with Sempris?

14 A. Correct.

15 Q. I'm sorry if I asked you this. Do you know
16 what the OTY program was with Sempris?

17 A. I do not.

18 MR. BRODERICK: 22.

19 (Exhibit 22 marked for identification.)

20 BY MR. BRODERICK:

21 Q. I'm showing you Exhibit 22, QSR 17764 through
22 17766. Do you know what that document is?

23 A. It looks like a report going back from my IT
24 with Sempris and one of my accounts payable.

25 Q. And do you know what "broken orders" refers

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1 to?

2 A. No.

3 Q. Do you know what "fixable bad orders" refers
4 to?

5 A. No.

6 (Exhibit 23 marked for identification.)

7 BY MR. BRODERICK:

8 Q. So showing you what's been marked as
9 Exhibit 23, QSR 12343 through 12344. This is the e-mail
10 exchange about Hollis Linn in New Hampshire, who wanted
11 to be added to the Do Not Call list; and you had asked
12 about the reply.

13 So it appears that you did call Hollis Linn on
14 her cellphone and added it to your internal Do Not Call
15 list?

16 A. "Whatever contact" ...

17 MR. EPSTEIN: No. Objection; completely
18 misstates what this says.

19 BY MR. BRODERICK:

20 Q. Yeah. Well, it says that you contacted her on
21 603.759.0269?

22 A. That's what it says.

23 Q. And that she was added to your internal Do Not
24 Call list?

25 A. Yes.

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1 Q. And that it appears to reflect that Sempris
2 was aware that you were calling -- that somebody was
3 complaining about getting called on a cellphone?

4 MR. DEVINE: Objection; misstates the
5 document.

6 MR. EPSTEIN: Objection to form.

7 BY MR. BRODERICK:

8 Q. You can answer.

9 MR. EPSTEIN: Repeat the question, if you
10 would, Madam Reporter.

11 THE COURT REPORTER: "Question: And this, it
12 appears to reflect that Sempris was aware that
13 somebody was complaining about getting called on a
14 cellphone?"

15 A. Yes.

16 BY MR. BRODERICK:

17 Q. And Quality didn't do anything to hide the
18 fact that you were calling people on cellphones?

19 A. I don't know that this is a cellphone. It
20 doesn't say this is a cellphone; it just says this is
21 the number we reached -- we contacted this customer at.

22 Q. Well, in Mark Ricke's e-mail to Sandy at
23 Quality at QSR -- the second page -- QSR 12344, it says,
24 "We have a customer that is continually getting calls on
25 her cellphone from Budget Savers."

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1 A. It doesn't mean we're contacting her
2 cellphone. I don't know which of these two are -- are
3 landlines or cellphones; it doesn't state.

4 Q. Okay. But you didn't do anything to hide the
5 fact that you were calling cellphones from Sempris.
6 Correct?

7 A. I don't ever do anything that needs to be hid.

8 MR. DEVINE: Object to form.

9 BY MR. BRODERICK:

10 Q. Right. I'm not saying you did.

11 In 2010 did you have a time where you were --
12 where Sempris was deducting, based on whether or not
13 they were getting paid by the customer, from what they
14 were paying you?

15 MR. DEVINE: Object to form.

16 MR. BRODERICK: Let me just show you the
17 document. It will be easier.

18 (Exhibit 24 marked for identification.)

19 BY MR. BRODERICK:

20 Q. So showing you Exhibit 24, which is QSR 12714
21 to 12717. Do you remember this exchange?

22 A. No.

23 Q. Do you remember the issue?

24 A. No, but I can tell you what it is by looking
25 at this.

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1 Q. Okay.

2 A. This looks like we sent over sales that
3 they -- that we were not paid on.

4 Q. And why were you not getting paid on certain
5 sales?

6 A. There was a glitch on their system, or they're
7 saying it could have been people that already were
8 members of the product, or it could have been a mistake.

9 (Exhibit 25 marked for identification.)

10 THE WITNESS: Thank you.

11 THE COURT REPORTER: You're welcome.

12 BY MR. BRODERICK:

13 Q. So showing you Exhibit 25, QSR 13620 --

14 A. Uh-huh.

15 Q. -- to 13621. And on the second page of this,
16 did -- so it says, "We are experiencing difficulties
17 receiving Budget Saver's toll-free number. We cannot
18 transfer calls to them; and when we or customers try to
19 call them directly, the call just drops."

20 Is it your understanding that sometimes
21 Quality would transfer people to Budget Savers'
22 customer-service department?

23 A. Yes.

24 Q. And what would you transfer them for?

25 A. Questions regarding their product or billing.

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1 Q. But not -- not during those verification
2 process?

3 A. No. These are people that called back.

4 Q. Okay.

5 MR. DEVINE: Thank you.

6 (Exhibit 26 marked for identification.)

7 THE WITNESS: Thank you.

8 THE COURT REPORTER: You're welcome.

9 BY MR. BRODERICK:

10 Q. So I'm showing you Exhibit 26, which is marked
11 QSR 22 through QSR 31. Do you recognize that
12 document?

13 A. Yes.

14 Q. And who is Infomercial?

15 A. Stompeez.

16 Q. Stompeez. And is this -- do you have any
17 other contracts with Stompeez?

18 A. No, not that I know of.

19 Q. How much did you pay Stompeez per lead
20 provided to you?

21 A. \$1.50 per customer is what it states here in
22 the contract.

23 MR. BRODERICK: All right. Maybe just take a
24 quick break. I might be wrapped up.

25 MR. DEVINE: Okay.

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1 MR. EPSTEIN: And I'll go over some notes.

2 MR. EPSTEIN: All right.

3 THE VIDEOGRAPHER: We are now off the record
4 at 12:35 p.m.

5 (Recess from 12:35 p.m. to 12:43 p.m.)

6 THE VIDEOGRAPHER: We're back on the video
7 record at 12:43 p.m.

8 MR. BRODERICK: And I have no further
9 questions for Ms. Mercuris at this time. Thank
10 you.

11 MR. EPSTEIN: Matt, do you have any inquiry?

12 MR. DEVINE: I -- I will be. Do you want to
13 break for lunch now or should I start?

14 MR. EPSTEIN: Let's go ahead and take our
15 break for lunch; say, get back here in about an
16 hour or thereabouts?

17 MR. DEVINE: Can we do it a little shorter
18 than an hour? Would you mind if we -- I'd like to
19 get Ms. Mercuris on her way. I think she's eager
20 to --

21 THE WITNESS: Yeah, I'll be just going
22 downstairs.

23 MR. DEVINE: That's all I'm doing. I can do a
24 half hour, 45 minutes if that's --

25 MR. EPSTEIN: It will depend on what we find

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1 downstairs, but that's fine. We'll turn it over as
2 quickly as we can.

3 THE VIDEOGRAPHER: We are off the video record
4 at 12:44 p.m.

5 (Recess from 12:44 p.m. to 1:39 p.m.)

6 THE VIDEOGRAPHER: We're back on the video
7 record at 1:39 p.m.

8 | CROSS-EXAMINATION

9 | BY MR. DEVINE:

10 Q. Good afternoon, Ms. Mercuris. We met before.
11 As you know, my name's Matt Devine; and I represent
12 Sempris in the Toney lawsuit.

13 And I just wanted to see if we could put back
14 in front of you again deposition Exhibit No. 1, if you
15 don't mind. It should be right in front of you,
16 probably on the very bottom of your stack.

17 A. Got it. Okay.

18 Q. And just for convenience purposes, I don't
19 know how you and Mr. Backman want to organize this, but
20 I am going to go through some of those documents again
21 with you.

22 A. Okay.

23 Q. And if --

24 MR. BACKMAN: I'll deal with it.

25 MR. DEVINE: Yeah.

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1 BY MR. DEVINE:

2 Q. So you're now looking at deposition Exhibit
3 No. 1; and this is titled "Defendant Sempris Rule
4 30(b) (6) Deposition Notice to Quality Resources,
5 Incorporated." And I just wanted to make sure that we
6 were clear that you're appearing today to testify on
7 behalf of Quality Resources as a company. Is that
8 correct?

9 A. Yes.

10 Q. And as Mr. Broderick asked you when he was
11 questioning you, if you take a look at Pages 5 through 7
12 of deposition Exhibit 1, you're prepared to testify
13 today about Topics 1 through 17, as the corporate
14 representative for Quality Resources.

15 A. Yes.

16 Q. Is that correct? Okay. Thank you.

17 A. You're welcome.

18 Q. You can put that aside.

19 Now, Ms. Mercuris, you testified that Quality
20 Resources and Sempris had been doing business together
21 for quite some time. Isn't that right?

22 A. Yes.

23 Q. And it's -- it's your view, isn't it, that
24 Sempris is a good company?

25 A. Absolutely.

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1 Q. You wouldn't do business with a company that
2 was not a good company.

3 A. No.

4 Q. Correct?

5 A. Correct.

6 Q. And you know George Richards, the CEO of
7 Sempris?

8 A. Yes.

9 Q. And you know and understand George to be a
10 very good and astute businessman?

11 A. Yes.

12 Q. And you understand George to be someone who
13 is -- George Richards to be someone who is very diligent
14 and careful about trying to make sure that Sempris does
15 what it needs to do under --

16 A. Absolutely.

17 Q. -- the law?

18 A. Yes.

19 Q. And I apologize, I'm going to interject, but
20 let's try to make sure we don't talk over each other.

21 A. Sorry.

22 Q. No, no, no, that's okay.

23 And you -- you also understand that Sempris,
24 as a company, is very diligent and careful about how it
25 approaches its business activities to make sure that

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1 they comport with the law. Isn't that correct?

2 A. Yes.

3 Q. Because if they weren't, Sempris was not a
4 careful company, you wouldn't do business with them.

5 A. Correct.

6 Q. Right?

7 Now, you testified when Mr. Broderick was
8 asking you questions, that Quality Resources acts as a
9 marketer for Provell. Do you remember that?

10 A. Yes.

11 Q. And by -- Provell is the -- is a -- well, let
12 me just ask it this way. I'll strike that.

13 Quality Resources is also a marketer for
14 Sempris. Isn't that right?

15 A. Yes.

16 Q. And by -- by "marketer," that means that
17 Quality Resources sells products that Sempris creates.

18 A. Correct.

19 Q. Right?

20 And in other words, you -- your -- Sempris --
21 let's make sure we understand kind of what Quality
22 Resources does versus what Sempris does.

23 So Quality Resources obtains customer lists
24 from companies other than Sempris. Correct?

25 A. Correct.

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1 Q. Right? And you maintain a database of
2 prospective customers that Quality Resources can call
3 and try to sell products to. Is that fair?

4 A. Yes. We provide an order-confirmation service
5 for our clients.

6 Q. Right. And we've heard the word "client" a
7 few times today. And I -- I understand there's sort of
8 two brackets --

9 A. Right.

10 Q. -- of clients, I would assume? And I want to
11 make sure that we're kind of using our terminology
12 carefully here.

13 So there's -- on the front end, there are
14 companies that provide you with customer lists. Right?

15 A. Right.

16 Q. And Infomercials/Stompeez would fall into that
17 category. Correct?

18 A. Right.

19 Q. And then on the other end, there are companies
20 like Sempris that Quality Resources also contracts with.
21 Correct?

22 A. Yes.

23 Q. And what is the role that you play for Sempris
24 as -- as a company, Quality Resources?

25 A. We acquire customers for Sempris; and Sempris

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1 bills the customer and fulfills the customer.

2 Q. Does Sempris provide any other services to the
3 customers?

4 A. Well, they fulfill the product. They do
5 customer service. They do the billing. So once I
6 acquire the customer, we're done with that customer. We
7 give that customer to Sempris.

8 Q. Right. Understood.

9 Okay. And at Quality Resources, the -- the
10 expertise that you have is ensuring as much as possible
11 that when you get someone on the phone to try to sell a
12 product to them, you're able to consummate a sale. Is
13 that fair?

14 A. Yes.

15 Q. And how do you do that? What is the expertise
16 that Quality Resources brings to bear on that
17 transaction?

18 A. We have our own call center internally, and we
19 are able to provide a service to our other clients who
20 obtain customers; so we can confirm their order, as well
21 as sell them a third-party offer.

22 Q. Okay. Let's talk first about how you select
23 the companies from which you purchase customer lists.

24 A. Uh-huh.

25 Q. Is it important to you that you purchase a

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1 particular type of customer list?

2 A. No.

3 Q. No? Do you want -- do you want -- does
4 Quality Resources make any efforts to identify customers
5 who might be more likely rather than less likely to
6 purchase an upsell product?

7 A. Well, we only work with people like Stompeez,
8 who acquires customers through direct marketing: the
9 Internet, telephone.

10 Q. Okay. And you've testified when Mr. Broderick
11 was asking you questions that you have how many
12 companies that you obtain customer lists from?

13 A. Between 80 and 100.

14 Q. Okay. And of those 80 to 100, do you -- are
15 you aware of any contractual relationships that Sempris
16 has with those 80 to 100 companies that you get lists
17 from?

18 A. No.

19 Q. Does Sempris have any role or any involvement
20 in Quality Resources' selection of the companies that
21 you get customer lists from?

22 A. No.

23 Q. Does -- did Sempris have any role or any
24 involvement in Quality Resources' contract with
25 Infomercials?

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1 A. No.

2 Q. Does Sempris stand to receive any dollars from
3 Infomercials or from Quality Resources as a result of
4 the Infomercials/Quality Resources contract?

5 A. Yes.

6 Q. How do you do that?

7 A. Basically we acquire customers through those
8 companies and their customers.

9 Q. Okay. In other words, the only way that
10 Sempris would derive any revenue from that is if, when
11 Quality Resources calls one of the Infomercials
12 customers, a sale is consummated.

13 A. Correct.

14 Q. Is that right?

15 A. Yes.

16 Q. Okay. Now, you said you operate -- Quality
17 Resources operates -- let me strike that real quick.

18 So I'm going to use the word "you" somewhat
19 frequently, probably. I probably shouldn't use the word
20 "you," but I will try -- try to avoid it. But when I
21 do, I just want to make sure we're on the same page.
22 When I say "you," I don't mean you personally, Cheryl
23 Mercuris; I mean "you" as a corporate entity, Quality
24 Resources, since you're testifying on behalf of Quality
25 Resources.

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1 A. Correct.

2 Q. You understand?

3 A. I understand, yes.

4 Q. Okay. Great.

5 Okay. So you -- you testified when

6 Mr. Broderick was asking questions that you sell a

7 program called "Budget Savers." Is that right?

8 A. Yes.

9 Q. And would you agree with me that Budget Savers
10 is a program that Sempris creates?

11 A. Yes.

12 Q. And that Sempris has a Budget Savers
13 website?

14 A. Yes.

15 Q. And that Sempris provides customer service to
16 people who enroll in Budget Savers?

17 A. Yes.

18 Q. All right. And in order for someone to become
19 a member in Budget Savers -- well, let me strike that
20 and ask this.

21 Does any other company sell Budget Savers
22 other than Quality -- other than Quality Resources, to
23 your knowledge?

24 A. I believe so.

25 Q. Which company?

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1 A. I really am not aware of who his customers are
2 at the moment, or clients; but I'm one of several.

3 Q. Okay. You mentioned a program called "Value
4 Plus"?

5 A. Correct.

6 Q. Did -- did -- did Quality Resources ever sell
7 Value Plus --

8 A. Yes.

9 Q. -- for Sempris? Okay.

10 Is it correct, Ms. Mercuris, that Value Plus
11 and Budget Savers are different programs?

12 A. They're basically the same program. We added
13 a few other benefits. We also -- well, they did,
14 Sempris, and then changed the name.

15 Q. So at any point was Quality Resources ever
16 selling two separate Sempris programs at the same
17 time?

18 A. Yes.

19 Q. And do you recall approximately when that
20 occurred?

21 A. I just saw it in one of these documents, which
22 made me remember People's Express, we tested --

23 Q. Okay.

24 A. -- a health product.

25 Q. Okay. And was People's Express a separate

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1 program from Budget Savers?

2 A. Yes.

3 Q. Okay. And did you actually sell People's
4 Express?

5 A. Yes.

6 Q. Okay. Do you recall how long you sold
7 People's Express?

8 A. I don't, but it wasn't long.

9 Q. Okay. So Value Plus, Budget Savers, People's
10 Express; those are the programs -- the Sempris programs
11 that Quality Resources has sold?

12 A. Yes.

13 Q. Are there any others?

14 A. I don't believe so.

15 Q. Okay. And currently Quality Resources is only
16 selling Budget Savers. Is that right?

17 A. Yes.

18 Q. Okay. And do you recall approximately when
19 you stopped selling Value Plus?

20 A. No. I would guess five years ago.

21 Q. And at the -- at the time you were selling
22 Value Plus, were you also selling Budget Savers?

23 A. No.

24 Q. So are the only two Sempris programs that you
25 sold simultaneously Budget Savers and People's

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1 Express?

2 A. Yes.

3 Q. Okay. When Mr. Broderick was asking you
4 questions, you mentioned that in 2007 Quality Resources
5 tried a second product for Sempris other than Budget
6 Savers. Is that the People's Express --

7 A. Yes.

8 Q. -- product?

9 Okay. Now, you -- you mentioned earlier,
10 Ms. Mercuris, that Quality Resources has approximately a
11 20 to 30 percent conversion rate.

12 A. Correct.

13 Q. Right?

14 And by "conversion rate," what -- what do
15 you -- what does that mean?

16 A. People that say, yes, that they would actually
17 like Budget Savers.

18 Q. Okay. And what -- so when you use that -- you
19 just answered my question, I just want to make sure
20 we're clear, though -- when you use that 20 to 30
21 percent number, you were -- you were referring to the
22 conversion rate with respect to Budget Savers, and not
23 some other program that you sell.

24 A. Correct.

25 Q. Is that fair? Okay. Great.

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1 You testified earlier that you also provide
2 upsell services for Affinion and Hydroxatone?

3 A. Correct.

4 Q. Hydroxatone is the product. Right?

5 A. Correct.

6 Q. And the company that created that product is
7 the Atlantic Coast Media Company.

8 A. Correct.

9 Q. Is that right?

10 So other than Sempris, your two other upsell
11 partners, if you're okay with that term, would be
12 Affinion and Atlantic Coast Media?

13 A. We just started Atlantic Coast this week,
14 testing.

15 Q. Okay. So in 2012 -- the year 2012 -- would
16 you have only had Affinion and Sempris as your upsell
17 partners?

18 A. 2012, I'm not sure. I could have been selling
19 Vertrue's product.

20 Q. Any other companies?

21 A. I did some Privacy, which was identity theft,
22 for another company. We've tested, throughout the
23 years, several companies; so in 2012, I'd have to look
24 to be absolutely sure.

25 Q. Okay. Okay. How -- can you explain to me

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1 how -- you explained to Mr. Broderick a little bit how
2 Sempris occupies the first position --

3 A. Correct.

4 Q. -- in -- in -- in your calls that you make to
5 prospective customers. And by "first position," that
6 means that after the order verification occurs, the
7 first upsell would be Sempris product?

8 A. The first product, correct.

9 Q. Right. And then the "second position" would
10 be the second product that's sold after the Sempris
11 product.

12 A. Correct.

13 Q. Is that right?

14 And then are there ever three positions on a
15 call, or is it always two?

16 A. There's three.

17 Q. There are three. Okay. Is it ever more than
18 three, or is it always --

19 A. No, never.

20 Q. Okay. And who occupies -- in 2012 who
21 occupied the second position? Do you recall?

22 A. I don't. Probably Affinion.

23 Q. Okay. And what would be --

24 A. Or Vertrue; I don't recall.

25 Q. What were the Affinion or Vertrue products

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1 that were sold in 2012?

2 A. Similar products; shopping products, identity
3 products, identity theft, we sold health products.

4 Q. Okay. Was -- is Shoppers Advantage an
5 Affinion product?

6 A. Yes.

7 Q. Okay. Is that the -- a product that you
8 sold --

9 A. Yes.

10 Q. -- for Affinion?

11 A. Yes.

12 Q. Okay. So the way that a call would work is
13 first you would verify the customer's underlying retail
14 purchase. Right?

15 A. Correct.

16 Q. And then secondly, after that, you would make
17 an offer for the Sempris program.

18 A. Correct.

19 Q. Right? And then would always go on to offer
20 No. 2 or --

21 A. Yes.

22 Q. -- or would you only go into offer No. 2 if
23 offer No. 1 was accepted?

24 A. If offer No. 1 was accepted, we would go into
25 offer No. 2.

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1 Q. And what if offer No. 1 is declined?

2 A. We don't go into anything else.

3 Q. Then you're done?

4 A. Yes.

5 Q. Then the call's over?

6 A. (Moves head up and down.)

7 Q. Okay. That helps.

8 Who -- who would have occupied the third
9 position around 2012?

10 A. Again, I would have to look. I don't recall.

11 Q. Okay. Okay. Now, you testified earlier that
12 George Richards knew that Sempris -- I'm sorry. Let me
13 strike that.

14 You testified earlier that George Richards
15 knew that Quality Resources was using an auto dialer.

16 A. Correct.

17 Q. Right?

18 And what I want to understand is the time
19 frame and the basis for that statement. So can we
20 talk -- you -- you talked about in 2013, communication
21 that you had with Mr. Richards regarding rules changes,
22 and a conversation you had with him about rules changes.
23 Right?

24 A. Correct.

25 Q. Is it your testimony, Cheryl, that -- if I can

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1 call you "Cheryl" -- that George knew before 2013 that
2 Quality Resources was using an auto dialer?

3 A. Yes.

4 Q. Okay. Let's stop there for a second. What is
5 the basis for that statement?

6 A. We have been using an auto dialer since the
7 inception of our agreement.

8 Q. Okay. Tell me exactly the date that
9 Mr. Richards learned that you were using an auto dialer
10 prior to 2013, if you can.

11 A. I couldn't give you a specific date; but
12 before we signed a contract, he was aware of how we
13 marketed.

14 Q. Okay. When you say he was aware of how you
15 marketed, are you saying he was aware that Quality
16 Resources specifically used an auto dialer?

17 A. Yes.

18 Q. Okay. Tell me when -- tell me how he became
19 aware that Quality Resources used an auto dialer.

20 A. I told him.

21 Q. Okay. Any -- other than you telling him, is
22 there any other source for Mr. Richards understanding --

23 A. Well --

24 Q. -- that you used an auto dialer?

25 A. I had to go through some due diligence before

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1 I was able to sell for Provell. So I absolutely had to
2 convey how we were generating a customer.

3 Q. Okay. Other than you, did anyone else at
4 Quality Resources tell anyone at Sempris, prior to 2013,
5 that Quality Resources used an auto dialer?

6 A. It was well-known. It wasn't something that
7 was a secret.

8 Q. I understand that. But if you could really
9 try to drill into the question for me.

10 Can you identify anyone else at Quality
11 Resources, other than yourself, who told anyone at
12 Sempris that Quality Resources used an auto dialer prior
13 to 2013?

14 A. Sure. Sandy was in contact with Sempris, as
15 far as the internal Do Not Call. So they would call and
16 request us to take certain customers out of the dialer
17 and stop calling them.

18 Q. Okay. Any -- anything else? Anyone else
19 besides Sandy? Any ...

20 A. I don't know.

21 Q. Okay. Let's start with you, then. Can you
22 tell me who was present when you told Mr. Richards,
23 prior to 2013, that Quality Resources used an auto
24 dialer?

25 A. I don't know.

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1 Q. You don't remember?

2 A. No. That was before 2005.

3 Q. Okay. Can you approximate by year when --
4 when that would have occurred?

5 A. Right before we signed a contract.

6 Q. Which contract?

7 A. The first contract.

8 Q. Okay. In what year?

9 A. 2005.

10 Q. Okay. So sometime prior to 2005 your
11 testimony is that you told Mr. Richards that Quality
12 Resources used an auto dialer?

13 A. No companies like Sempris will take orders
14 from a company like mine unless they know exactly how
15 they are marketing their customers, acquiring their
16 customers.

17 Q. Okay. I -- I -- I appreciate that.

18 MR. DEVINE: And I -- with all due --

19 A. So --

20 MR. DEVINE: -- respect, I'm going to object
21 to your answer as nonresponsive.

22 BY MR. DEVINE:

23 Q. I'm going to ask if -- if you can tell me
24 specifically --

25 MR. DEVINE: If you could read the question

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1 back, if you wouldn't mind, the original question.

2 THE COURT REPORTER: Yes, sir.

3 "Question: Okay. So sometime prior to 2005
4 your testimony is that you told Mr. Richards that
5 Quality Resources used an auto dialer?"

6 A. Yes.

7 BY MR. DEVINE:

8 Q. Okay. And I want to know everything there is
9 to know about the conversation that you had with
10 Mr. Richards about that subject.

11 MR. BACKMAN: Object to form.

12 A. It was too long ago. I can't tell you details
13 about that conversation.

14 BY MR. DEVINE:

15 Q. Okay. Can you tell me where you were
16 physically when it happened?

17 A. No.

18 Q. Can you tell me where Mr. Richards was when it
19 happened?

20 A. I believe we were at a convention.

21 Q. Which convention?

22 A. ERA.

23 Q. Was anyone else present?

24 A. I don't remember.

25 Q. Do you -- are you aware of any documents that

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1 would reflect that you told Mr. Richards prior to 2013
2 at a convention that Quality Resources used an auto
3 dialer?

4 A. Yes. It was always known how I marketed. I
5 was an outbound call center.

6 Q. Which document?

7 A. I don't know the document.

8 MR. BRODERICK: Well, she said, "how I
9 marketed."

10 BY MR. DEVINE:

11 Q. Do you remember the specific language you used
12 when you --

13 A. No.

14 Q. -- told that to Mr. Richards?

15 How did he respond?

16 A. He aggressively wanted our business, so it was
17 not a problem with him. He knew we were a good company
18 with good, clean business.

19 Q. Other than that conver -- at that --
20 can you -- you tell me the full name of that convention
21 that you just referenced?

22 A. ERA?

23 Q. Yeah. What does that mean?

24 A. Electronic Retail Association.

25 Q. Okay. And what -- do you recall where that

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1 was held?

2 A. There's two a year. There's one in Las Vegas
3 and there's one in Miami.

4 Q. Which convention was it at when you had --

5 A. I don't know.

6 Q. -- this conversation?

7 And I -- I'm sorry, but we can't -- we have
8 to --

9 A. I believe it's Las Vegas, but I'm not sure.

10 Q. Okay. Okay. Was anyone else from Sempris
11 present at this conversation?

12 MR. BACKMAN: Form; asked and answered.

13 Go ahead.

14 A. I believe Adam Hanks might have been; but
15 again, that was ten years ago. I don't recall.

16 BY MR. DEVINE:

17 Q. Okay. Okay. Let's talk about -- you also
18 mentioned that Sandy Marina -- is that her --

19 A. Yes.

20 Q. -- correct last name?

21 A. (Moves head up and down.)

22 Q. Okay. Sandy Marina had a conversation with
23 someone at Sempris prior to 2013, indicating that
24 Quality Resources used an auto dialer?

25 A. Not in those words; but several e-mails back

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1 and forth, as you could see in these exhibits, asking
2 her to put a customer on the Do Not Call and take them
3 out of the dialing system.

4 Q. Was every dialing system an auto dialer?

5 A. Yes.

6 MR. BACKMAN: Form. When?

7 BY MR. DEVINE:

8 Q. In -- in -- prior to 2013.

9 A. I don't understand "was every system." What
10 does that mean?

11 Q. Was -- well, if you take somebody off of a --
12 on a -- if you put somebody on a Do Not Call list, how
13 does that have any relation whatsoever to a -- to the
14 type of dialer that's used?

15 A. It doesn't matter what type --

16 MR. BRODERICK: Objection.

17 A. -- of auto dialer you're using, but you have
18 to take that customer out of the dialer so they will
19 never be called again.

20 BY MR. DEVINE:

21 Q. Are you aware of any document or any
22 conversation with -- Sandy Marina ever had with anybody
23 at Sempris where she used the word "auto dialer"?

24 A. I have no idea.

25 Q. Okay. I'm going to go back to Exhibit 20, if

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1 you could find that.

2 A. Got it.

3 MR. DEVINE: I have a vente, is that --
4 thanks.

5 MR. EPSTEIN: Who had iced?

6 THE WITNESS: Me.

7 MR. EPSTEIN: Are these both the same?

8 THE WITNESS: No. Mine's the smaller one.

9 MR. EPSTEIN: Who's the other one? Is that
10 yours?

11 MR. BACKMAN: Yeah.

12 MR. DEVINE: Thanks for the coffee.

13 MR. EPSTEIN: You weren't here.

14 MR. BRODERICK: That's okay. I'm
15 well-caffeinated.

16 MR. DEVINE: There's more up there, isn't
17 there?

18 BY MR. DEVINE:

19 Q. I know you're getting set up over there. Just
20 tell me -- tell me when you're ready.

21 A. I'm ready.

22 Q. Okay. Now, you -- you mentioned in your
23 conversation with Mr. Broderick that Sempris was in
24 charge of scripting.

25 A. Correct.

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1 Q. Right?

2 And you've got Exhibit 20 in front of you.

3 Right?

4 A. Yes.

5 Q. And you -- can you identify that document for
6 me, if you don't mind?

7 A. It's a script.

8 Q. Okay. It's a script for what program?

9 A. Budget Savers.

10 Q. Okay. Who typed up the script?

11 A. I really don't know.

12 Q. Is it accurate that Quality Resources tests
13 the language that you use in scripts to determine what
14 language is more productive in terms of generating
15 conversion rates?

16 A. No. For Sempris, he doesn't monitor that, as
17 well as, for instance, Affinion. You cannot go one word
18 off of the script with Affinion. George Sempris trusts
19 that I am very compliant, and they listen to our phone
20 calls. So there has been calls in the past from George
21 if he doesn't like something in the script.

22 Q. Is it your testimony that Sempris provides you
23 with a physical copy of each script that's read for
24 Budget Savers?

25 A. In the beginning he did.

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1 Q. And when did he stop?

2 A. I don't know.

3 Q. Can you ballpark it for me?

4 A. I really can't.

5 Q. And I can represent to you, Ms. Mercuris, that
6 we've reviewed your document production and we've never
7 seen an e-mail between Quality Resources and Sempris, or
8 any other communication between Quality Resources and
9 Sempris, that contained a Budget Savers script. Are you
10 aware of any such document?

11 A. No. We mostly talked on -- on the phone. We
12 don't do a lot of e-mailing.

13 Q. So how would the -- how did Mr. Richards, or
14 anyone at Sempris, communicate scripts to Quality
15 Resources for Budget Savers?

16 A. We adhere to the rules of -- for instance, of
17 Affinion and the lawyers, of what needs to be in the
18 script. And there have been -- like I said, there's
19 been times where he has called and said, "Take this out.
20 I don't like this," and we've modified it.

21 Q. Okay. But is it your testimony that -- of all
22 the language in the script, what percentage was drafted
23 by Quality Resources?

24 MR. BRODERICK: Objection.

25 A. I don't know. I don't know. But he has to

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1 approve the script in order for us to sell for him.

2 BY MR. DEVINE:

3 Q. How does -- how does -- tell me about that
4 approval process. How does that work?

5 A. Well, now, since we've been working together
6 for so long, they just listen to our calls. And we've
7 been using the same script forever.

8 Q. Where are -- are you aware of any document
9 that indicates Sempris approving of a script that
10 Quality Resources was using to sell Budget Savers?

11 A. I am not aware of it.

12 Q. Okay. Who are the people at Quality
13 Resources -- well, let me strike that.

14 Who are the people at Sempris who approved
15 scripts, in your testimony?

16 A. I would say Mark Ricke.

17 Q. Anyone else?

18 A. I don't believe so.

19 Q. Okay. Can you tell me who Mr. Ricke would
20 communicate with to approve or not approve scripts?

21 A. No. This was years ago. I don't remember.
22 And like I said, they -- they e-mailed me a script when
23 we first began, and we've really never deviated from
24 that script; a little bit here and there, but it's
25 pretty much the same product since we started.

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1 Q. Do you still have that e-mail?

2 A. I doubt it.

3 Q. Okay. What year was that?

4 A. It had to be 2005, when we started.

5 Q. And who sent the e-mail?

6 A. I don't know.

7 Q. Who did they send it to?

8 A. Probably me.

9 Q. What did the e-mail say?

10 A. I don't know.

11 Q. Have you looked for the e-mail?

12 A. Have I looked for the e-mail?

13 Q. Yeah.

14 A. No.

15 Q. Have you looked for it?

16 A. No.

17 MR. DEVINE: We request, Counsel, that you
18 take a look for -- for any such e-mail --

19 THE WITNESS: We looked for every e-mail --

20 MR. DEVINE: -- to the extent it exists.

21 THE WITNESS: -- I know.

22 MR. BACKMAN: Uh-huh. We can do it. If you
23 have a discovery issue, you can talk to me about
24 it.

25 MR. DEVINE: Okay.

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1 BY MR. DEVINE:

2 Q. Can you -- is there any -- any point in time
3 when Sempris rejected a script?

4 A. Scripts were not changed unless there was
5 something changed, for instance, the price. We've
6 changed the price, he's changed the time of the trial.
7 If something in the product changes, that would be
8 really a big change.

9 Q. Right. And that's -- Sempris's responsibility
10 is to provide you with details about the program that
11 Sempris has. Right?

12 A. Correct.

13 Q. And your responsibility as the marketer is to
14 try to sell that product to a customer. Correct?

15 A. Yes.

16 Q. And you've described Quality Resources as the
17 marketer. Right?

18 A. Correct.

19 Q. Wouldn't a marketer create the language that
20 is used to try to sell the product?

21 MR. BACKMAN: Form.

22 MR. BRODERICK: Objection.

23 A. George is a very smart businessman and would
24 never let an outside marketer just create their own
25 script. So we were given a script in the beginning, and

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1 we've always adhered to that script. I've made changes
2 here and there due to the product, and they've never had
3 a problem with it; and if they did, they'd call me and I
4 would change it.

5 BY MR. DEVINE:

6 Q. Okay.

7 A. Which is very standard in the industry.

8 Q. Okay. Did you ever have any conversations
9 with Mark Ricke about scripting?

10 A. I'm sure I did.

11 Q. Do you -- can you -- do you recall when --
12 when you had those conversations?

13 A. No.

14 Q. Are you aware of any documents that reflect
15 those conversations?

16 A. No.

17 Q. Was anyone else present during those
18 conversations?

19 A. I don't believe so. That would be by e-mail,
20 or if we met at a show.

21 Q. Okay. Is there any analysis internally that
22 happens at Quality Resources to gauge the language in
23 the script and whether or not it is helpful in
24 generating a sale conversion?

25 MR. BACKMAN: Form.

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1 A. Can you say that again?

2 BY MR. DEVINE:

3 Q. Sure. And I apologize if it was confusing.

4 Is there a -- do you do any internal analysis at Quality
5 Resources about the effectiveness of the script
6 language?

7 A. Yes.

8 Q. Okay. Who does that?

9 A. Well, I check all of the stats, which are
10 pretty similar daily because we've used the same script
11 for so long. But I have changed little words. For
12 instance, where I would place reviewing the address or
13 speaking to the customer regarding their order; but
14 never the pertinent language that needs to be in the
15 script.

16 Q. When you say "pertinent language," what are
17 you referring to? The details of the program?

18 A. Billing. The details of the program and the
19 billing.

20 Q. Right. So is -- is it -- your testimony is
21 that the details of the program, that the amount that
22 the -- would include the amount that the program costs.

23 A. Uh-huh.

24 Q. Right?

25 A. Correct.

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1 Q. The duration of the trial period. Right?

2 A. Right.

3 Q. The amount of the trial-period membership.

4 Right?

5 A. Yes.

6 Q. The name of the program?

7 A. Yes.

8 Q. The nature of the program?

9 A. Yes.

10 Q. Okay. Anything else that would fall into that
11 category?

12 A. Not that I can recall.

13 Q. Okay. But the rest of the language would be
14 language that -- in the script that Quality Resources
15 would draft. Correct?

16 A. We had legal language that has to be in the
17 script. This is not the script. This is a fronter
18 script.

19 Q. What do you mean by "fronter script"?

20 A. This is basically asking the customer if
21 they're interested in this product. And like I
22 explained earlier, it then goes to a verification
23 department, which is recorded, and Budget Savers is
24 explained in more detail; and we receive a positive
25 confirmation on tape from the customer that they would

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1 like to purchase it.

2 Q. Okay. So what I'd like to understand better
3 is what exactly Quality Resources drafts of all the
4 language that is used to a prospective or actual
5 customer, so can you explain that for me?

6 A. What we draft?

7 Q. Yeah. As far as any communications between
8 one of your call-center reps and the customer.

9 MR. BACKMAN: Form.

10 A. It would be scripted.

11 BY MR. DEVINE:

12 Q. Right. And Quality Resources drafts that?

13 MR. BACKMAN: Form; asked and answered.

14 MR. BRODERICK: Objection.

15 MR. BACKMAN: Do you understand where he's
16 going with the question?

17 THE WITNESS: Yeah, I do understand.

18 A. And basically you're trying to say that I make
19 up the scripts.

20 MR. BACKMAN: Just correct him if he's wrong.

21 BY MR. DEVINE:

22 Q. I'm not trying to say anything; I'm asking
23 you.

24 A. No, I do not create the scripts. I modify the
25 scripts. I've modified them since I received his

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1 initial script, and him and I discuss the scripts
2 because we both know what needs to be in there legally.

3 Q. Okay. So let's look at the first two
4 sentences of this Budget Saver script. "Hi, John
5 Public, my name" -- and I'm looking at and reading from
6 20 -- "Hi, John Public, my name is Joe Agent; and I'm
7 calling you regarding your product purchase. We would
8 like to thank you for purchasing from us and make sure
9 we have the correct address." Right?

10 A. Yes.

11 Q. Did I read that correctly?

12 A. I believe so.

13 Q. And that's language that Quality Resources
14 would put together, because it doesn't deal with --

15 A. Correct.

16 Q. -- the details of the program. Right?

17 A. Yes.

18 Q. Okay. And the next two sentences, that's also
19 language that Quality Resources would put together,
20 because it doesn't deal with the details of the program.
21 Correct?

22 A. Yes.

23 Q. Okay. And for the next paragraph -- we're now
24 on Paragraph 3 -- it says, "To show our appreciation for
25 your order and how much we value you as a customer,

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1 we're sending you \$100 in gas vouchers for -- just for
2 trying the first 14 days of Budget Savers for only a
3 dollar."

4 Now, it's my understanding from your
5 testimony -- correct me if this is wrong -- that the
6 dollar amounts there would come from Sempris, but the
7 rest of the language would come from Quality. Is that
8 right?

9 MR. BACKMAN: Form; objection.

10 A. No.

11 BY MR. DEVINE:

12 Q. Okay. So at some point, somebody at Sempris
13 sent you that sentence, "To show you -- to show our
14 appreciation for your order and how much we value you as
15 a customer, we're sending you \$100 in gas vouchers just
16 for trying the first 14 days of Budget Savers for only a
17 dollar"?

18 MR. BACKMAN: Form.

19 MR. BRODERICK: Objection.

20 A. I don't really understand what you're asking
21 me.

22 BY MR. DEVINE:

23 Q. Okay.

24 A. Did I make up that sentence?

25 Q. Who -- who drafted that sentence?

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1 A. I did; but Sempris has to approve everything
2 that we say on the floor.

3 Q. Next sentence, "Just take a look at it. It's
4 a brand-new savings program that will save you money on
5 hundreds of stores, restaurants, hotels, airlines,
6 rental cars, and much, much more." Who drafted that
7 sentence?

8 A. I did.

9 Q. "Now, once you get a chance to look" -- I'm
10 continuing -- "Now, once you get a chance to look over
11 everything, if you're not interested in the savings you
12 don't have to keep it, John." Who drafted that
13 sentence?

14 A. I might have drafted the wording, but all of
15 the facts come from Sempris and they approved our
16 script. I can't make up a script.

17 Q. I -- I would just ask you to answer my
18 question. I don't --

19 MR. BACKMAN: She is.

20 THE WITNESS: I'm trying.

21 MR. BACKMAN: She is.

22 BY MR. DEVINE:

23 Q. Next -- next sentence, "But if you see it --
24 but if you see it will save you money and you would like
25 to continue, then your benefits would extend you

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1 automatically for 29.95 a month." Who drafted that
2 sentence?

3 MR. BRODERICK: Objection.

4 A. I don't know. It's not even grammatically
5 correct.

6 BY MR. DEVINE:

7 Q. Can you just tell me who drafted it?

8 MR. BACKMAN: She said, "I don't know."

9 A. I don't know.

10 BY MR. DEVINE:

11 Q. Okay. Who drafted the remaining sentences in
12 the -- in the script?

13 A. Between myself and Sempris is how we came up
14 with the script.

15 MR. DEVINE: I'm going to respectfully object
16 to the answer as nonresponsive.

17 BY MR. DEVINE:

18 Q. I'm just asking, who wrote the words on the
19 page?

20 A. I did.

21 Q. Okay. Thank you. You can put aside 20.
22 When Mr. Broderick was asking you questions,
23 he asked if Sempris knew that Quality Resources was
24 calling cellphones. Right?

25 And your -- your response was, if I'm not --

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1 if my notes are correct -- that Mr. Richards did know
2 that?

3 A. Yes.

4 Q. Sempris did know that. Right?

5 A. Yes.

6 Q. And I just want to understand the basis for
7 your testimony that Mr. Richards knew that.

8 A. He knew -- he knew that because he knew how we
9 were generating a customer, by order confirmation; and
10 he's definitely aware of what "order confirmation"
11 means; and we discussed the existing business
12 relationship before we ever started order confirmation.

13 Q. Okay. And I -- I just want to make sure I
14 understand. The order confirmation is the process that
15 Quality goes through to confirm a customer's underlying
16 retail purchase.

17 A. Correct.

18 Q. Is that right? In other words, you're
19 verifying that the customer bought, in the case that
20 we're all involved in now, Stompeez slippers. Right?

21 A. Yes.

22 Q. That's order confirmation?

23 A. And we verify different things for different
24 clients.

25 Q. Okay. So help me understand how Mr. Richards

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1 or Sempris would have known that Quality was calling
2 cellphones because you were using order confirmation?

3 A. Because they are existing customers of my
4 client, such as Stompeez; and when they purchased on --
5 online, obviously there is -- there is a -- what's it
6 called? Not a disclaimer, but -- where they are told
7 that they're going to be marketed by a third party and
8 they can check it "yes" or "no."

9 Q. Right. I understand that.

10 A. Right. So he's -- George was definitely aware
11 of this.

12 Q. Okay. Did any -- is -- is there -- I want to
13 understand -- I want to make sure we all understand the
14 difference between you assuming that Mr. Richards knew
15 this, and that somebody actually told Mr. Richards this
16 or communicated it to him in some way.

17 So is there a date or a conversation or a
18 document you can point to that shows that Quality
19 Resources ever told Sempris that cellphones were being
20 called at any point?

21 MR. BACKMAN: Object to form.

22 MR. BRODERICK: Objection.

23 A. Do I recall the date of the conversation? No.

24 BY MR. DEVINE:

25 Q. Okay. Do you know of any -- do you know who

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1 was involved in the conversation?

2 A. George and myself, I would assume; and I would
3 assume George would not negate that.

4 Q. And when was that conversation,
5 approximately?

6 A. 2010.

7 Q. And where was it?

8 A. I don't know.

9 Q. Was it a phone call? Was it in person?

10 A. I don't know.

11 Q. Was anyone else present?

12 A. I don't know.

13 Q. What did you say to him?

14 A. I believe we talked about it, and we met
15 several times and spoke about it.

16 Q. Well, I just want to know what you said to
17 him.

18 A. I had to get it approved by him.

19 Q. What did you say to him?

20 A. I don't exactly remember. I explained to him
21 the process of order confirmation, and he approved it.

22 Q. How did you explain the process of order
23 confirmation to him?

24 A. How did I explain it?

25 Q. Yeah.

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1 A. I don't understand the question.

2 Q. Okay. Well, you -- how -- how did you -- tell
3 me what you said to him.

4 A. I don't remember --

5 Q. Okay.

6 A. -- exactly.

7 Q. Okay.

8 MR. DEVINE: I'm going to mark this.

9 MR. BRODERICK: What are we up to?

10 MR. DEVINE: Is this 27?

11 THE COURT REPORTER: (Moves head up and down.)

12 MR. BRODERICK: We might have used this.

13 MR. DEVINE: We used a slightly different
14 version.

15 MR. BRODERICK: Different version.

16 MR. DEVINE: Yeah.

17 (Exhibit 27 marked for identification.)

18 THE WITNESS: Thank you.

19 THE COURT REPORTER: You're welcome.

20 BY MR. DEVINE:

21 Q. Let me ask you a few -- before we start -- you
22 can put the document aside for a second. Before we kind
23 of get into the document, I just wanted to ask you a
24 few -- sorry about that -- a few questions about Quality
25 and how Quality works.

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1 So you -- you testified you're the CEO of
2 Quality Resources. Right?

3 A. Yes.

4 Q. And does Quality have a board of directors?

5 A. No.

6 Q. Do you report to anyone at all?

7 A. No.

8 Q. As CEO, would it be accurate to say that you
9 are responsible for the day-to-day operations at
10 Quality?

11 A. Yes.

12 Q. And that you're responsible for the policies,
13 practices, and procedures that Quality and its employees
14 follow?

15 A. Yes.

16 Q. Okay. And it's a privately held company.
17 Right?

18 A. Yes.

19 Q. Okay. And, you know, as -- as far as Quality
20 Resources goes, would it be accurate to say that no one
21 outside of Quality Resources has the authority to direct
22 the policies, procedures, and practices of Quality
23 Resources?

24 A. Correct.

25 Q. And how many call centers do you have?

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1 A. Just one.

2 Q. Just one?

3 A. (Moves head up and down.)

4 Q. And how many call-center employees,
5 approximately?

6 A. Between 350 and 400.

7 Q. And they're all in Clearwater?

8 A. Yes.

9 Q. Okay. And what are the different departments
10 that you have within Quality?

11 A. I have HR.

12 Q. Uh-huh.

13 A. I have accounting. I have compliance. I have
14 Quality control, IT, and sales.

15 Q. Okay. Okay. And would -- it would be
16 accurate to say that your call-center reps do not
17 communicate with Sempris in any way. Is that right?

18 A. That's right.

19 Q. In other words, they take their direction from
20 within Quality. Correct?

21 A. Yes.

22 Q. And there's someone who oversees your call
23 centers.

24 A. Yes.

25 Q. Right? And that person who runs the call

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1 centers reports to you.

2 A. Yes.

3 Q. Right? And the people who run your HR,
4 accounting, compliance, quality control, and IT, all
5 report to you. Right?

6 A. Yes.

7 Q. They don't report to Sempris.

8 A. No.

9 Q. Right?

10 And they don't take direction from Sempris.
11 Right?

12 A. No.

13 Q. And Sempris doesn't control or direct how
14 employees and executives at Quality Resources do their
15 jobs. Correct?

16 MR. BRODERICK: Objection.

17 A. No.

18 BY MR. DEVINE:

19 Q. Sempris doesn't make any phone calls to try to
20 sell Budget Savers, to your knowledge. Right?

21 A. I don't know.

22 Q. Does Sempris run a call center?

23 A. I'm not sure.

24 Q. Are you aware of any fact that would indicate
25 that Sempris runs a call center?

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1 A. No.

2 Q. Are you aware of any fact that would indicate
3 that Sempris buys lists of customers to call to try to
4 sell Budget Savers?

5 A. I don't really know what he does outside of my
6 business.

7 Q. Okay. At any point do you inform Sempris who
8 your product partners are?

9 A. Yes.

10 Q. Okay. Does Sempris have a list of your
11 product partners?

12 A. There's only one, besides them.

13 Q. Oh, okay. Maybe I'm using vague language.
14 When you say "product partners," what do you mean?

15 A. The product, like Sempris's product, Budget
16 Savers.

17 Q. Oh, I got it. Okay. I was referring
18 to the ...

19 A. Order-confirmation clients?

20 Q. Correct. Right. Does Sempris know your
21 roster of order-confirmation clients?

22 A. No.

23 Q. Okay. Does Sempris have any role or
24 involvement in the development of the customer lists
25 that you develop at Quality Resources?

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1 A. No.

2 Q. You have the dialing system that you've
3 discussed at Quality Resources. Right?

4 A. Yes.

5 Q. And there are various inputs that Quality
6 Resources has to make to this dialing system. Right?

7 A. Yes.

8 Q. Can you describe what some of those inputs
9 are?

10 A. Inputs, as far as what?

11 Q. Just how -- customer -- which customer lists
12 go into it, when they go into it, when calls are made,
13 where calls are made.

14 A. We receive the customers daily from all of our
15 clients.

16 Q. And when you say "clients," who are you
17 referring to? I just want to make sure we're on the
18 same page.

19 A. Order-confirmation clients.

20 Q. Right. Right.

21 A. We call them immediately, before they get
22 their product, to -- to reconfirm their order.

23 Q. Okay. You mentioned the VICIdial system.
24 Right?

25 A. Yes.

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1 Q. Did Sempris have any role or involvement in
2 your selection of the VICIdial system?

3 A. No.

4 Q. Did Sempris have -- has Sempris ever been
5 on-site at Quality Resources?

6 A. I believe so.

7 Q. Who was on-site?

8 A. George.

9 Q. And when was that?

10 A. I don't remember.

11 Q. Anyone else other than George?

12 A. I think so.

13 Q. Do you have any specific recollection?

14 A. No.

15 Q. Okay. Do you recall the purpose of
16 Mr. Richards' visit?

17 A. I don't. I don't know if there was a purpose,
18 rather than maybe he was in town.

19 Q. So to the best of your recollection, it was a
20 social visit, personal visit?

21 A. Probably both.

22 Q. Okay. Do you have any -- does Quality
23 Resources have any business relationship with a company
24 called "Synergy, LTD"?

25 A. No.

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1 Q. Does Quality Resources have any business
2 relationship with a company called "Leisure Time
3 Savings"?

4 A. No.

5 Q. Does Quality Resources have any business
6 relationship with a company called "Direct Discount
7 Club"?

8 A. No.

9 Q. Okay. Does Sempris have any involvement in
10 hiring and firing at Quality Resources?

11 A. No.

12 Q. Does Sempris have any involvement of any kind
13 in the way you train employees at Quality Resources?

14 A. No.

15 Q. Does Sempris have any involvement of any kind
16 in how you evaluate your employees at Quality --

17 A. No.

18 Q. -- Resources?

19 Does Sempris have any involvement of any kind
20 on how you schedule your employees at Quality Resources?

21 A. No.

22 Q. Does Sempris have any involvement of any kind
23 in how you compensate your employees?

24 A. No.

25 Q. Or how you supervise them and instruct them?

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1 A. No.

2 Q. Okay. You -- you've testified that Quality
3 Resources maintains its own internal Do Not Call list.

4 A. Yes.

5 Q. Right?

6 How many names are on that list?

7 A. I don't know.

8 Q. And who's responsible for maintaining that
9 list at Quality?

10 A. Sandy.

11 Q. Sandy Marina?

12 A. Yes.

13 Q. Okay. Have you ever sent that list to
14 Sempris?

15 A. I don't know.

16 Q. Of the total -- can you give me a ballpark as
17 far as how many names are on that list?

18 A. I can't. I can make a phone call and find out
19 for you.

20 Q. Of all the names that are on the list -- I
21 appreciate that -- but of all the names that are on the
22 list, how many of them came from Sempris?

23 A. I have no idea.

24 Q. Could you give me a percentage,
25 approximately?

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1 A. No.

2 Q. Small or large?

3 A. It would be a Sandy question.

4 Q. Okay. Okay. Let's go to the document that
5 you have in front of you.

6 MR. BACKMAN: Let's take a break real quick.

7 MR. DEVINE: What's that?

8 MR. BACKMAN: Let's just take a break real
9 quick.

10 MR. DEVINE: Sure. Oh, wait. Can I just ask
11 a question about the document before we -- before
12 we take a break? I'm fine with taking a break. I
13 just want to make sure we're -- that -- this won't
14 take long. If that's okay, Jeff?

15 MR. BACKMAN: Sure.

16 MR. DEVINE: If you don't mind?

17 MR. BACKMAN: You're just stopping me from
18 using the restroom.

19 MR. DEVINE: I -- I apologize for that.

20 MR. BACKMAN: As long as you can deal with
21 that, I have no problem.

22 MR. DEVINE: I can deal -- I can deal with
23 that. This will take just a couple --

24 MR. BACKMAN: Good. Good.

25 MR. DEVINE: What number are we on?

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1 THE COURT REPORTER: 27.

2 MR. DEVINE: 27, okay.

3 BY MR. DEVINE:

4 Q. So you -- you've got Exhibit 27. This is a
5 slightly different version of a -- the e-mail is the
6 only difference that I am -- I'm aware of, of a document
7 that Mr. Broderick talked to you about.

8 If you could turn to the second page of this
9 document -- it's the first non-e-mail page -- and take a
10 look at No. 1, the second paragraph, the language that's
11 stricken from that. You would agree with me that
12 Quality Resources proposed the deletion of that
13 language.

14 A. Yes.

15 Q. Right?

16 And that the redlines that are reflected in
17 this -- I guess they're technically gray lines since
18 there's no color in this document -- but the -- the gray
19 lines that are reflected in this document are proposed
20 changes from Quality Resources?

21 A. Yes.

22 MR. DEVINE: Okay. Now we can take a break.

23 Thanks, Jeff. I appreciate it.

24 THE VIDEOGRAPHER: We are now off the record
25 at 2:35 p.m.

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1 (Recess from 2:35 p.m. to 2:43 p.m.)

2 THE VIDEOGRAPHER: We're back on the video
3 record at 2:43 p.m.

4 BY MR. DEVINE:

5 Q. Let's talk about -- so we -- before we broke,
6 we were talking about Quality Resources' internal Do Not
7 Call list; but there's also a different Do Not Call list
8 that -- that is outside of Quality Resources that you're
9 also aware of.

10 A. Yes.

11 Q. Is that right?

12 Does -- can you tell me about the steps that
13 Quality takes to ensure that it does not call
14 individuals who are on that Do Not Call list?

15 MR. BACKMAN: Form.

16 MR. BRODERICK: Objection.

17 A. No, that would be an IT question.

18 BY MR. DEVINE:

19 Q. Okay. Have you ever -- would you agree with
20 me that Sempris does not direct or control how Quality
21 Resources attempts to comply with the Do Not Call
22 list?

23 A. Yes.

24 MR. BRODERICK: Objection.

25 BY MR. DEVINE:

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1 Q. And would you also agree with me that --
2 let -- let me just do this. Let's look at the ...

3 MR. DEVINE: Did I do that?

4 THE COURT REPORTER: No, no.

5 MR. BRODERICK: Jeff's throwing stuff.

6 MR. DEVINE: Jeff's throwing stuff? He's that
7 mad I wouldn't let him go to the bathroom?

8 Did you mark this?

9 MR. BRODERICK: What number is it? 32?

10 MR. DEVINE: Oh, yeah, you did. Never mind.
11 I'll use one in here. Keep that simpler.

12 Can you pick up Exhibit 4, Jeff, and put it in
13 front of Ms. Mercuris, please?

14 THE WITNESS: Thank you.

15 BY MR. DEVINE:

16 Q. Ms. Mercuris, you have Exhibit 4 in front of
17 you?

18 A. Yes.

19 Q. And that's the telemarketing program sales
20 agreement between Sempris and Quality Resources. Is
21 that right?

22 A. Yes.

23 Q. And that's the version of your contract with
24 Sempris that's been operative since September 26, 2010.
25 Is that right?

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1 MR. BACKMAN: Form. And for the record, the
2 entire exhibit is a composite of multiple
3 agreements.

4 BY MR. DEVINE:

5 Q. You can answer the question.

6 A. Can you repeat the question?

7 Q. Sure. Would you agree with me that the
8 telemarketing program sales agreement that you have in
9 front of you, dated September 26, 2010, is the current
10 operative agreement between Sempris and Quality
11 Resources?

12 MR. BACKMAN: Form.

13 MR. BRODERICK: Objection.

14 A. I don't believe so. There's addendums. This
15 is not the final agreement.

16 BY MR. DEVINE:

17 Q. Okay. Other than addendums that -- what --
18 what's missing from the agreement?

19 A. I believe we renewed this after 2010.

20 Q. Okay. For now, let's look at Paragraph 1(A)
21 of Exhibit 4. And if you look at the middle of the
22 paragraph it says, "Company agrees that in marketing the
23 programs it will comply with all applicable state and
24 federal laws, rules, regulations, including but not
25 limited to those regarding deceptive advertising in the

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1 Telephone Consumer Protection Act of 1991; the
2 Telemarketing & Consumer Fraud & Abuse Prevention Act of
3 1994; the Telemarketing Sales Rule, 16 CFR, Part 310, as
4 it now exists, or as amended in the future in
5 Regulation E of the Federal Reserve Board." Do you see
6 that language?

7 A. Yes.

8 Q. And you understand that "company" is defined
9 in this agreement in the first paragraph as "Quality
10 Resources."

11 A. Yes.

12 Q. Right?

13 A. Yes.

14 Q. And you understand with that language, Quality
15 Resources was agreeing to comply with all applicable
16 laws in marketing Sempris's programs. Correct?

17 A. Yes.

18 Q. And Quality Resources did do that. Correct?

19 A. Yes.

20 Q. You took active and diligent steps to try to
21 make sure that you complied with all laws?

22 A. Yes.

23 Q. And you would agree with me, Ms. Mercuris,
24 that under the language in the telemarketing program
25 sales agreement, Quality Resources took

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1 responsibility -- full responsibility -- for all
2 marketing of the Sempris programs. Correct?

3 A. Yes.

4 Q. Okay. And that's how it worked in practice.
5 Right?

6 A. Yes.

7 Q. Okay. Now let's go back to Quality Resources
8 for a second, the call center; just a couple of other
9 quick questions.

10 You'd agree with me that Sempris has no
11 direction or control over which particular call-center
12 representative calls a particular client or series of
13 clients. Right?

14 A. Right.

15 Q. That's a "yes"?

16 A. Yes.

17 Q. And you would also agree with me that Sempris
18 has no direction or control over Quality in terms of the
19 number of upsells that might be offered to a particular
20 customer.

21 A. Correct.

22 Q. Right? And we talked earlier about how
23 there -- there is as many as three different positions
24 in a call. Right? There's a first position, second
25 position --

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1 A. Yes.

2 Q. -- and a third position? And only the first
3 would be occupied by Sempris. Right?

4 A. Right.

5 Q. And you would agree with me that Sempris has
6 no involvement whatsoever in the language that's used
7 for position -- call position No. 2 and call position
8 No. 3. Correct?

9 A. Correct.

10 Q. Because that language doesn't involve Sempris
11 in any way.

12 A. Correct.

13 Q. Right? You're not selling a Sempris program.
14 Right?

15 A. Right.

16 Q. So Sempris doesn't see that language.
17 Right?

18 A. They hear it when they listen to recordings,
19 if they want.

20 Q. Okay. But they have no approval authority
21 over --

22 A. No, none.

23 Q. -- that language?

24 A. (Moves head from side to side.)

25 Q. Now, you testified that there are a few states

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1 that you don't sell Sempris programs into?

2 A. Right.

3 Q. Tell me how that mechanically works when
4 you've got other companies involved, like Affinion,
5 et cetera; how do you ensure that Sempris programs
6 aren't marketed in particular states?

7 A. If Sempris does not market in that state, we
8 don't call that state.

9 Q. Period?

10 A. Period.

11 Q. For anyone?

12 A. No.

13 Q. Okay. Okay.

14 A. Because Sempris is the first product, so we'd
15 have to sell that first.

16 Q. Okay. This case involves a call that was made
17 in December 2012 to plaintiff Sarah Toney. Are you
18 familiar --

19 A. Yes.

20 Q. Okay. And do you know whether Quality
21 Resources has a tape recording of that call?

22 A. No. She was not a sale.

23 Q. Okay. Do you not record no-sale calls?

24 A. We do record them, but we don't keep them
25 as -- forever, like we do the sales.

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1 Q. Okay. So you don't have a --

2 A. No.

3 Q. You don't have a recording of the Sarah Toney
4 call?

5 A. No.

6 Q. All right. Would you agree with me that a
7 Sempris product was not sold to Ms. Toney?

8 A. I agree.

9 Q. Okay. What is the -- do you have any
10 knowledge whatsoever, one way or another, about whether
11 a Sempris product was offered to Ms. Toney?

12 A. Yes, I'm sure it was.

13 Q. And what's the basis for your statement?

14 A. I'm just guessing; but when we confirm the
15 order, as long as she was positive and had no problem
16 with the order confirmation, we would have, but I can't
17 say 100 percent --

18 Q. Okay.

19 A. -- positive that we offered it.

20 Q. So you'd be speculating then?

21 A. Correct.

22 MR. DEVINE: Okay. Let's mark this 28.

23 (Exhibit 28 marked for identification.)

24 BY MR. DEVINE:

25 Q. Ms. Mercuris, the court reporter's put before

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1 you what's been marked Exhibit 28. The subject line --
2 it's -- it's an e-mail -- it's a couple of e-mails, but
3 the top e-mail is from Sandy Zufall to Mark Riche. And
4 it says -- it -- it involves -- do you recognize this
5 document, first of all?

6 A. Do I recognize it?

7 Q. Yeah. Have you ever seen it before?

8 A. Not until yesterday.

9 Q. Okay. Would you agree -- tell me why Utah was
10 on your master list of state suppressions.

11 A. I don't know.

12 Q. Do you know when Utah went on your list?

13 A. I do not.

14 Q. So you would have no knowledge one way or
15 another about whether Sempris asked Quality Resources --
16 well, let me strike that.

17 You would have no knowledge one way or another
18 as to whether Utah ended up on your list of state
19 suppressions as a result of a request from Sempris?

20 A. This is a request from Sempris; and we already
21 had it as a state suppression.

22 Q. Right. And my question is, because you don't
23 know how Utah got on your list of state suppressions,
24 you can't say one way or another whether Sempris had any
25 role --

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1 A. No.

2 Q. -- in putting it there?

3 A. No.

4 Q. Okay. You can put that aside.

5 You testified in -- in talking to
6 Mr. Broderick earlier, that George Richards agreed that
7 Quality Resources did not have to scrub the Do Not Call
8 list because of your order-confirmation process. Right?

9 A. I don't know if he agreed --

10 MR. BACKMAN: Form.

11 MR. BRODERICK: Objection.

12 A. -- but he must have been aware of it.

13 BY MR. DEVINE:

14 Q. Okay. But you're assuming that he was aware
15 of it?

16 A. Correct.

17 MR. BRODERICK: Objection.

18 BY MR. DEVINE:

19 Q. Okay. Mr. Broderick asked you about your
20 communications with Mr. Richards, and I think you said
21 that you don't -- you don't speak to him very often?

22 A. No.

23 Q. That's right?

24 A. That's right.

25 Q. Okay. And that you meet in person about one

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1 time a year.

2 A. Correct.

3 Q. Right?

4 And that you occasionally talk on your
5 cellphone.

6 A. Correct.

7 Q. Right? If you could just ballpark for me, how
8 often would you say you talk to George every year?

9 A. Maybe two or three times. The relationship is
10 so good, there is really no need for us to speak a lot.
11 It's very smooth. We're both on the same page.

12 Q. Okay. Do you communicate with anyone else at
13 Sempris personally?

14 A. Not personally.

15 Q. Okay. So who would you say at Quality
16 Resources has the most frequent communications with
17 Sempris?

18 A. Sandy.

19 Q. Anyone else other than Sandy?

20 A. Accounting.

21 Q. Accounting? Okay.

22 And what's Sandy's job with respect to
23 Sempris?

24 A. Sandy sends the sales to Sempris. She deals
25 with all requests from Sempris. She's their day-to-day

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1 person.

2 Q. Okay. And do you know who she communicates
3 with at Sempris?

4 A. I know it used to be Mark. I don't know who
5 it is today.

6 Q. Okay. And from the accounting perspective,
7 would that just deal with the payments that are going
8 back and forth --

9 A. Yes.

10 Q. -- between -- I shouldn't say "back and
11 forth"; but the payments that Sempris is making to
12 Quality?

13 A. Correct.

14 Q. In other words, there would be no
15 communications, that you're aware of, between your
16 accounting department and Sempris about how you sell
17 Budget Savers?

18 A. No.

19 Q. Right. Okay. When you speak to -- who
20 initiates your communications with George Richards? Is
21 it you or him?

22 A. Either one of us.

23 Q. And is there a common theme to those? Are
24 there particular things that you're always talking
25 about?

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1 A. No.

2 Q. There's a variety of subjects?

3 A. Yes.

4 Q. Okay. Do you have any notes of any of your
5 calls with George?

6 A. No.

7 Q. Is anyone else typically on the phone when --

8 A. No.

9 Q. -- you talk to George?

10 A. No.

11 Q. How often does Sandy -- is her last name
12 Zufall or Marina?

13 A. Marina.

14 Q. It's Marina? How often does Sandy Marina
15 speak to Mark Ricke or --

16 A. I don't know.

17 Q. Does Sandy always report to you when she talks
18 to Sempris?

19 A. No.

20 Q. Now, look at Exhibit 8 and exhibit -- let's do
21 8 first. Do you remember Mr. Broderick asking you
22 questions about Exhibit 8?

23 A. Yes.

24 Q. Is it your understanding that you and
25 Mr. Richards in this communication were just discussing

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1 how to comply with the existing rules on credit card
2 capture?

3 MR. BACKMAN: Form.

4 A. No.

5 BY MR. DEVINE:

6 Q. What was your understanding?

7 A. We were talking about a competitor, Vertrue,
8 who was trying to outbid him on my business; and talking
9 about rules that they were under the impression that had
10 passed.

11 Q. Okay. When -- when you say "they," you mean
12 Vertrue?

13 A. Vertrue, yes.

14 Q. Okay. Was Vertrue right or wrong about their
15 view?

16 MR. BACKMAN: Form.

17 A. I don't know.

18 BY MR. DEVINE:

19 Q. Okay. And you -- you did not -- did you or
20 did you not end up replacing Sempris with Vertrue?

21 A. No.

22 Q. And why did you stay with Sempris?

23 A. Because they're a good company.

24 Q. Right. And you knew that Mr. Richards and
25 Sempris were very diligent and careful about ensuring

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1 that they do business the right way?

2 A. Absolutely.

3 Q. Okay. Put 8 aside.

4 And No. 9. Could you look at Exhibit 9.

5 Exhibit 9, Mr. Broderick also asked you about. And
6 would -- it would be fair to say that, you know, this
7 involved a customer complaint regarding the membership
8 program.

9 A. Correct.

10 Q. Right? And you would agree with me,
11 Ms. Mercuris, that in the customer-service business,
12 particularly when you have a high volume of customers,
13 complaints occasionally happen?

14 A. Correct.

15 Q. And would you also agree with me that, to the
16 best of your knowledge, Sempris customers are, generally
17 speaking, very happy with the programs that they enter
18 into?

19 A. Yes.

20 MR. BRODERICK: Objection.

21 BY MR. DEVINE:

22 Q. And at the top of Exhibit 9, Mr. Richards
23 explains to you that while you didn't like the way he
24 handled a particular thing, that he was just trying to
25 follow the law in the state of Minnesota. Right?

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1 MR. BACKMAN: Form.

2 A. Yes.

3 BY MR. DEVINE:

4 Q. And you have no reason to think that
5 Mr. Richards is incorrect. Right?

6 A. No.

7 Q. Okay. Let's look at No. 14 -- Exhibit 14.
8 Do you have Exhibit 14?

9 A. Yes.

10 Q. Oh, you do. This is the VICIdial manager
11 manual that Mr. Broderick asked you about?

12 A. Correct.

13 Q. Did you ever provide this document to
14 Sempris?

15 A. Myself, I did not.

16 Q. Did anyone at Quality Resources?

17 A. I don't know. I doubt it.

18 Q. Do you have any reason -- you doubt it?

19 A. Yes.

20 Q. You -- you have no reason to believe that
21 anyone at Quality Resources ever would have sent this
22 document to Sempris. Right?

23 A. No.

24 Q. You can put that aside. Let's look at 17 --
25 Exhibit 17.

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1 I'd like you to take a look at the e-mail and
2 the -- near the top -- it's not the top e-mail, but the
3 second-to-the-top e-mail, from you to George Richards,
4 dated September 8, 2011.

5 A. Yes.

6 Q. I apologize, I referenced the wrong part of
7 that. I meant the -- the -- the message from George to
8 you, dated September 8, 2011, at 10:26 a.m. Do you see
9 that? "Cheryl, I've been thinking about our call"?

10 A. Yes.

11 Q. Do you have any recollection of that call?

12 A. A little bit.

13 Q. Tell me what you recall.

14 A. I recall that George wanted me to suppress
15 certain bins from the people that I call.

16 Q. Anything else you recall, other than what's
17 stated in the e-mail there?

18 A. No.

19 Q. Okay. You don't have any notes of your
20 conversation with George. Right?

21 A. No.

22 Q. Okay. Put that aside.

23 MR. DEVINE: Okay. I'm going to mark ... 29?

24 THE COURT REPORTER: Correct.

25 (Exhibit 29 marked for identification.)

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1 BY MR. DEVINE:

2 Q. If you can take a look at Exhibit 29,
3 Ms. Mercuris, which the court reporter has just put in
4 front of you; particularly, if you could just first
5 focus your attention on the -- on the last page. Is
6 that your signature on the top right?

7 A. Yes.

8 Q. Okay. And that's your verification of Quality
9 Resources' answers and objections to Sempris's first set
10 of interrogatories?

11 A. Yes.

12 Q. Okay. Did you review these before you signed
13 on Page 17?

14 A. Yes.

15 Q. Okay. Okay. You can put those aside.

16 MR. DEVINE: Mark this. There's two parts to
17 this.

18 (Exhibit 30 marked for identification.)

19 MR. DEVINE: Is this 30?

20 THE COURT REPORTER: 30.

21 BY MR. DEVINE:

22 Q. Can you take a look at 30, Ms. Mercuris. And
23 I put two pieces of paper together here. One is an
24 e-mail from you to George Richards; and the second
25 one -- and the e-mail's dated January 27, 2009; and the

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1 second one is the People's Health Express discount
2 program document that explains the program.

3 A. Yes.

4 Q. You referenced this program earlier when we
5 were talking. Correct?

6 A. Yes.

7 Q. And you agreed with me that this People's
8 Health Express discount program is separate from Budget
9 Savers.

10 A. Yes.

11 Q. Right?

12 And People's Health Express would not have
13 been offered to Sarah Toney in December 2012. Correct?

14 A. Correct.

15 Q. Okay. And to the best of your recollection,
16 how long did the People's Health Express discount
17 program last?

18 A. Maybe six months, eight months.

19 Q. And can -- does this help you ballpark the
20 time frame a little bit better of when it was in
21 operation?

22 A. Yes.

23 Q. When -- when would you say it was ended?

24 A. No -- no longer than a year.

25 Q. Well, you said six to eight months. Right?

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1 A. I believe. I'm really not sure.

2 Q. Okay. And who would you have read People's
3 Health Express to in terms of -- let me strike that.

4 Which -- would People's Health Express have
5 been offered on the same call as Budget Savers?

6 A. Yes.

7 Q. And what position would People's Health
8 Express have been offered?

9 A. Second.

10 Q. Okay. And why was it discontinued?

11 A. George discontinued it.

12 Q. And to the best of your recollection, why was
13 that?

14 A. It wasn't working for him.

15 Q. Okay. Okay. Put that aside.

16 MR. DEVINE: Mark 31.

17 (Exhibit 31 marked for identification.)

18 BY MR. DEVINE:

19 Q. You have Exhibit 31 in front of you,
20 Ms. Mercuris?

21 A. Yes.

22 Q. You want to take a minute and review it?

23 I'd like to focus your attention on the top
24 e-mail in the chain, from Sandy Zufall to Mark Ricke,
25 11/5 -- dated 11/5/2010. And -- and it says at the top,

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1 in Ms. Marina's e-mail, "I'm sorry, Mark, Cheryl is the
2 only one who has -- the only one that has access to or
3 sends copies of scripts and she's out of town until
4 Monday." Do you see that?

5 A. Yes.

6 Q. Is that accurate?

7 A. Yes.

8 Q. Tell me about how you maintain your scripts at
9 Quality Resources. Do you keep them personally or does
10 your secretary?

11 A. I -- other peop -- I mean, the scripts are on
12 the floor, so IT has access to scripts. You just -- she
13 just didn't know whether or not she should send it out.
14 But this is basically because they need to see exactly
15 what we're reading.

16 Q. Right. But Sempris doesn't keep copies; you
17 do. Right?

18 MR. BACKMAN: Form.

19 MR. BRODERICK: Objection.

20 A. Well, I presented them with a copy, yes.

21 BY MR. DEVINE:

22 Q. Okay.

23 A. They -- they're requesting a copy because it
24 had just changed.

25 Q. Right. And in Mr. Ricke's e-mail to Sandy

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1 Zufall, dated Friday, November 5, 2010, he says, "I do
2 have one favor. Could you forward a copy of the latest
3 script you're using. I'd like to keep one in the folder
4 to reference, but I don't believe I have the latest
5 since we converted to the 16-digit capture." Do you see
6 that?

7 A. Right.

8 Q. Right? So this isn't a request by Sempris,
9 you'd agree with me, to change any language in the
10 script?

11 MR. BACKMAN: Form.

12 MR. BRODERICK: Objection.

13 A. This is or is not?

14 BY MR. DEVINE:

15 Q. Is not.

16 A. No, this is -- they just want a version of the
17 script.

18 Q. Right. Okay. You can put that aside.

19 MR. DEVINE: If we can take a break. I think
20 I'm getting close.

21 THE VIDEOGRAPHER: Going off the video record
22 at 3:15 p.m.

23 (Recess from 3:15 p.m. to 3:25 p.m.)

24 THE VIDEOGRAPHER: We're back on the video
25 record at 3:25 p.m.

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1 MR. DEVINE: Oh, sorry.

2 BY MR. DEVINE:

3 Q. We have a couple other areas to cover here.
4 If you would go back to Exhibit 4, which I think is the
5 telemarketing program sales agreement. And look at --
6 do you have that in front of you, Ms. Mercuris?

7 A. Yes.

8 Q. And take a look at 1(B) on the first page,
9 where it says, "Although Sempris shall not have any
10 direct or indirect control over company's methods of
11 marketing the programs or its marketing solicitations,
12 company agrees to adhere to the confirmation and
13 verification criteria described in Exhibit B attached
14 hereto." Right?

15 A. Yes.

16 Q. And do you have Exhibit B there as well? It
17 should be in the back.

18 MR. BRODERICK: QSR 39?

19 MR. DEVINE: Yeah.

20 MR. BACKMAN: What's the Bates number?

21 MR. DEVINE: It's QSR 39.

22 BY MR. DEVINE:

23 Q. Do you see that?

24 A. Yes.

25 Q. Okay. I just wanted to make sure you saw it.

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1 And if you could go back to 1(B) -- and you would agree
2 that, you know, 1(B) was basically designed to ensure
3 that Quality Resources would have complete control over
4 the methods of marketing. Correct?

5 A. Yes.

6 Q. Okay. And that Sempris would not have any
7 control or direct -- ability to direct Quality Resources
8 in the way that it marketed. Correct?

9 A. Yes.

10 Q. Okay. And that that's actually how it worked
11 in practice. It's not only how you contracted; it's how
12 it worked in practice. Correct?

13 A. Yes.

14 MR. BRODERICK: Objection.

15 BY MR. DEVINE:

16 Q. If I can also ask you -- you can put that
17 aside.

18 This lawsuit is -- was brought by a woman
19 named Sarah Toney. And we talked a little bit about her
20 conversation with Quality Resources in December 2012.
21 Was any credit card ever taken from Mrs. Toney -- from
22 Ms. Toney?

23 A. No.

24 Q. Right?

25 A. No.

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1 Q. Thank you. Now, do you -- Quality Resources
2 has agreed to indemnify Infomercials in this litigation.
3 Is that right?

4 MR. BACKMAN: Form.

5 A. Yes.

6 BY MR. DEVINE:

7 Q. Okay. Can you tell me why?

8 MR. BACKMAN: As long as -- as long as it's
9 nothing that's based on conversations with your
10 lawyer.

11 BY MR. DEVINE:

12 Q. Yeah, I'm not looking for your communications
13 with your lawyers. I just want to know as a business
14 person why you decided to indemnify Infomercials.

15 A. Because basically they were doing their job by
16 giving us the names of their clients.

17 Q. Okay. And you also have an indemnification
18 provision in your agreement with Sempris. Correct?

19 A. I'm not sure. I believe so.

20 Q. If you can take a look at Exhibit 4. We'll go
21 back to that. It's Paragraph 5 of Exhibit 4. And it's
22 5(A). And I can just read, "Company shall indemnify and
23 hold Sempris and its directors, officers, and employees,
24 shareholders, affiliates, successors, and S&Es harmless
25 from any and all claims, damages, liabilities, suits,

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1 judgments, cost and expenses, including reasonable
2 attorneys fees arising and resulting directly and
3 indirectly from any acts, errors, or omissions of
4 company, its employees or agents, done or made under, in
5 connection with, or in connection with its activities
6 under this agreement." Do you see that provision?

7 A. Yes.

8 Q. Okay. And have you agreed to indemnify
9 Sempris in this litigation?

10 A. No.

11 Q. And can you tell me why not?

12 MR. BACKMAN: And again, if -- if that's a
13 decision that's based upon conversations with your
14 lawyers --

15 THE WITNESS: It is.

16 MR. BACKMAN: -- then I'm going to raise a
17 privilege objection.

18 BY MR. DEVINE:

19 Q. Okay. So on your -- on advice of counsel,
20 you're refusing to answer my question?

21 MR. BACKMAN: No, I'm telling her not to
22 answer because the answer calls for privileged
23 communication.

24 MR. DEVINE: Understood.

25 MR. BACKMAN: So that's in response to your

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1 question.

2 MR. DEVINE: Fair enough.

3 BY MR. DEVINE:

4 Q. Okay. And you're not going to answer my
5 question?

6 MR. BACKMAN: Same comment that I just made.

7 MR. DEVINE: Okay. Fair enough.

8 BY MR. DEVINE:

9 Q. Why are you agreeing to indemnify Infomercials
10 and not Sempris?

11 MR. BACKMAN: Same instruction. If it's based
12 upon conversations with your lawyers, you don't
13 have to answer.

14 BY MR. DEVINE:

15 Q. Okay. As a business person, why are you --
16 putting aside communications with your counsel, which I
17 don't want you to disclose here, can you tell me why
18 you're indemnifying Infomercials but not Sempris?

19 MR. BACKMAN: If the business decision,
20 though, is based upon conversations with your
21 lawyers --

22 THE WITNESS: It is. Sorry.

23 BY MR. DEVINE:

24 Q. Okay.

25 MR. BACKMAN: -- it's privileged.

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1 MR. DEVINE: Okay. Do you have any questions,
2 Mr. Epstein?

3 MR. BRODERICK: I have a few when you're done.

4 MR. DEVINE: Okay.

5 BY MR. DEVINE:

6 Q. You are -- under your contract with Sempris,
7 you are permitted -- specifically permitted to make
8 outbound calls on behalf of -- to make outbound calls;
9 correct, to try to sell Budget Savers?

10 A. As of right now?

11 Q. Right.

12 A. We're permitted to make manual outbound calls.

13 Q. Right. Understood. And there's no other type
14 of communication that you're authorized to currently
15 have on -- to try to sell Budget Savers, other than
16 outbound calling. Correct?

17 A. Correct.

18 Q. Okay. And are you communicating in any other
19 way with prospective customers, other than through
20 outbound calling?

21 A. No.

22 Q. Okay. And by "outbound customers" I mean
23 outbound --

24 A. Order confirmation.

25 Q. Correct. Right. Okay.

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1 And what is an "outbound call"? What does
2 that mean?

3 A. It means we contacted the customer.

4 Q. Yeah. You -- you affirmatively reached out to
5 the customer.

6 A. Correct.

7 Q. Right? Rather than having --

8 A. -- them contact --

9 Q. -- the customer call you?

10 A. Correct.

11 Q. That would be an inbound call --

12 A. Yes.

13 Q. -- if the customer called you. Right?

14 A. Yes.

15 Q. Okay.

16 MR. DEVINE: Mr. Broderick, I'll pass the
17 witness; and just mop up here, make sure I don't
18 have anything else, but I think I'm very close.

19 MR. BRODERICK: Okay.

20 REDIRECT EXAMINATION

21 BY MR. BRODERICK:

22 Q. On Exhibit 4, which I think is still in front
23 of you, the end of Paragraph A, it requires you to
24 adhere to the scripts verbatim. Correct? You had a lot
25 of questions about who drafted the scripts; but when the

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1 scripts are agreed to, you're contractually obligated to
2 have your agents --

3 A. Yes.

4 Q. -- read those scripts verbatim?

5 A. Yes.

6 Q. In order for you to be able to -- for Quality
7 to be able to transfer customers to Sempris, you're
8 going to have to make a lot of unsuccessful calls on
9 their behalf in order to land the customers; I think you
10 said there's only 30 percent of your calls that actually
11 resulted in someone signing up for Budget Savers?

12 MR. BACKMAN: Form. Is there a question

13 there?

14 BY MR. BRODERICK:

15 Q. Aren't -- aren't unsuccessful calls required
16 in order for you to land a certain percentage as
17 customers for Sempris?

18 MR. BACKMAN: Form.

19 MR. DEVINE: Form.

20 MR. BACKMAN: I don't understand what you mean
21 by "unsuccessful call."

22 BY MR. BRODERICK:

23 Q. Well, I mean a call that doesn't result in
24 anything. When I say "unsuccessful," a call that
25 doesn't result in you transferring a customer to

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1 Sempris.

2 A. What about it?

3 Q. Well, you can't -- there's no way in
4 telemarketing to only make calls that land customers.
5 Correct?

6 MR. BACKMAN: Form.

7 MR. DEVINE: Same objection.

8 A. You mean sales?

9 BY MR. BRODERICK:

10 Q. Sales, yeah.

11 A. Yes.

12 Q. Just -- just a telemarketing campaign, you're
13 gonna -- you're not gonna have a hundred percent
14 conversion rate on everybody you call?

15 A. Correct.

16 Q. And so the -- I guess what I'm getting at is
17 those customers -- those calls that you place but you
18 don't land, you don't get paid for those by Sempris.
19 Correct?

20 A. Correct.

21 Q. But it's necessary for you to call a hundred
22 people in order to transfer 30 customers. Correct?

23 MR. BACKMAN: Form.

24 A. Not necessarily.

25 BY MR. BRODERICK:

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1 Q. Roughly?

2 A. Roughly.

3 Q. Why do you say "not necessarily"?

4 A. I'm guessing at conversion.

5 Q. At -- at conversion? But that --

6 A. Yes.

7 Q. -- it's -- it's inherent in the business that
8 you're not going to convert every call into a sale?

9 A. Of course.

10 Q. And Quality believed it was in compliance with
11 the -- with the TCPA throughout its relationship with
12 Sempris. Correct?

13 A. Yes.

14 Q. And when Mr. Richards visited your facility,
15 did you show him around the facility? Did he go --

16 A. I don't remember.

17 Q. You don't remember if you showed him the call
18 center?

19 A. I would have if he -- but I don't remember.
20 You're talking about ten years ago.

21 Q. Long time ago. Sempris, to your knowledge, do
22 they generate a better percentage of their customers
23 through telemarketing companies such as Quality?

24 MR. DEVINE: Object to form.

25 A. I don't know.

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1 BY MR. BRODERICK:

2 Q. Do you know if they do direct marketing --

3 A. I don't know.

4 Q. -- themselves?

5 Is it common knowledge in the -- well, strike
6 that.

7 In 2010 to 2013, was it typical for people
8 operating a call center, or companies such as Quality
9 operating a call center, to use an ATDS?

10 MR. DEVINE: Object to form.

11 MR. BACKMAN: Form.

12 A. What is "ATDS"?

13 BY MR. BRODERICK:

14 Q. Automatic telephone dialing system; something
15 like the VICIdial system.

16 A. Yes.

17 MR. BACKMAN: Form.

18 BY MR. BRODERICK:

19 Q. That was common?

20 MR. DEVINE: Same objection.

21 A. Yes.

22 BY MR. BRODERICK:

23 Q. And so if you have over a hundred people,
24 it's -- is it fair to say that it's vastly more
25 efficient to use an automatic dialing system to keep

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1 those people in the call center busy?

2 A. Yes.

3 Q. And do you think it would have -- do you think
4 that -- did Quality do exactly what it was hired to do
5 by Sempris in placing calls from 2010 to 2013?

6 MR. DEVINE: Object to form.

7 A. Yes.

8 BY MR. BRODERICK:

9 Q. I believe Mr. Devine asked you if there was a
10 document you could point to, to show that Mr. Richards
11 or Sempris was -- was aware that you were making calls
12 to cellphones; and I think -- I think you said you
13 couldn't.

14 But I just direct your attention to ... I lost
15 track -- Exhibit 23, which is QSR 12343 to 12344. Would
16 that be an example of a document that indicates to you
17 that Provell/Sempris knew that calls were being
18 placed --

19 MR. DEVINE: Object to form.

20 BY MR. BRODERICK:

21 Q. -- to cellphones?

22 MR. DEVINE: Object to form; foundation.

23 BY MR. BRODERICK:

24 Q. The second page of this is Hollis Linn
25 complaining that she's continually getting calls on her

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1 cellphone from Budget Savers.

2 MR. DEVINE: Same objection.

3 A. Okay. I'm sorry. What's was the question?

4 BY MR. BRODERICK:

5 Q. The question is, does that document to you
6 indicate that Sempris was aware that you were making
7 calls to cellphones?

8 MR. DEVINE: Object to form.

9 A. Not necessarily. Several customers -- most
10 customers lie when they call and complain. So we would
11 have to call -- we would have to look it up.

12 BY MR. BRODERICK:

13 Q. Okay. But do you think Sempris would have
14 been surprised to learn that you had called a
15 cellphone?

16 A. No.

17 MR. DEVINE: Object to form.

18 BY MR. BRODERICK:

19 Q. And you said you record the sales portion of
20 the call, the frontscript portion?

21 A. No. We record the verification part of the
22 call.

23 Q. I -- I -- I thought you had said you also
24 record the sales part, but don't keep it for --

25 A. Correct. We don't keep the recordings like we

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1 do in sales.

2 Q. How long are those recordings kept?

3 A. I believe a week to two weeks.

4 Q. Did Sempris have access to those recordings?

5 A. Yes.

6 Q. And --

7 A. They don't -- they don't monitor those
8 recordings very often. Mostly it's just the sales.

9 Q. But they could have, via the FTP site?

10 A. I'm not sure. Sandy would know that answer.

11 MR. BRODERICK: Okay. I don't have anything
12 else. Thank you.

13 THE WITNESS: You're welcome.

14 MR. DEVINE: I just have one or two and then
15 I'm done.

16 RECROSS-EXAMINATION

17 BY MR. DEVINE:

18 Q. Would you agree with me, Ms. Mercuris, that
19 Sempris does not have any ability to direct or control
20 how Quality Resources disciplines or fires its
21 employees?

22 A. Yes.

23 MR. DEVINE: That's all -- that's all I have.

24 I -- I appreciate your time today.

25 THE WITNESS: You're welcome.

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1 MR. DEVINE: Yeah, thank you.

2 MR. BACKMAN: We'll read.

3 THE VIDEOGRAPHER: We are going off the video
4 record at 3:41 p.m.

5 (Off video record at 3:41 p.m.)

6 THE COURT REPORTER: Did you need to order it?

7 MR. BRODERICK: Yes, please.

8 THE COURT REPORTER: Ten business days is our
9 normal turnaround. Do you have something coming
10 up?

11 MR. BRODERICK: That's fine.

12 MR. DEVINE: That's fine for me too.

13 MR. BACKMAN: You know what -- well, let's
14 deal with something real quick; and this doesn't
15 have to be on the record.

16 (Discussion held off the record.)

17 MR. EPSTEIN: Are you going to be here
18 tomorrow?

19 THE COURT REPORTER: No.

20 MR. EPSTEIN: Then you'll need to leave those
21 exhibits.

22 THE COURT REPORTER: Oh. Okay.

23 Did anybody need a copy of the transcript?

24 MR. DEVINE: We'll certainly reach out to you
25 regarding that.

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1 THE COURT REPORTER: Okay. Did you need a
2 copy of the transcript?

3 MR. EPSTEIN: Yes. It's been ordered. Right?

4 THE COURT REPORTER: It has been ordered, the
5 original.

6 And you-all handle -- would you-all be able to
7 handle the read and sign?

8 MR. EPSTEIN: Yes.

9 THE COURT REPORTER: Okay. Thank you.

10 (The reading and signing of this videotaped
11 deposition is not waived, and the taking of this
12 videotaped deposition concluded at 3:41 p.m.)

13

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1 VIDEOTAPED DEPOSITION ERRATA SHEET

2

3 Our Assignment No. J0128159

4 Case Caption: Toney vs. Quality Resources, Inc.

5

6 DECLARATION UNDER PENALTY OF PERJURY

7 I declare under penalty of perjury that I have read
8 the entire transcript of my Videotaped Deposition taken
9 in the captioned matter or the same has been read to me,
10 and the same is true and accurate, save and except for
11 changes and/or corrections, if any, as indicated by me
12 on the VIDEOTAPED DEPOSITION ERRATA SHEET hereof, with
13 the understanding that I offer these changes as if still
14 under oath.

15

16 Signed on the _____ day of _____, 20____.

17

18

19

20 _____
21 CHERYL MERCURIS
22
23
24
25

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1 VIDEOTAPED DEPOSITION ERRATA SHEET
2 ESQUIRE JOB NO. J0128159

3 Page No. _____ Line No. _____ Change to: _____
4 _____

5 Reason for change: _____

6 Page No. _____ Line No. _____ Change to: _____
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8 Page No. _____ Line No. _____ Change to: _____
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10 Reason for change: _____

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18 Page No. _____ Line No. _____ Change to: _____
19 _____

20 Reason for change: _____

21 Page No. _____ Line No. _____ Change to: _____
22 _____

24 SIGNATURE: _____ DATE: _____
25 CHERYL MERCURIS

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1 VIDEOTAPED DEPOSITION ERRATA SHEET
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20 Reason for change: _____

21 Page No. _____ Line No. _____ Change to: _____
22 _____

24 SIGNATURE: _____ DATE: _____
25 CHERYL MERCURIS

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1 CERTIFICATE OF REPORTER
2

3 STATE OF FLORIDA
4

COUNTY OF HILLSBOROUGH
5

I, Jennifer Figueroa, Registered Professional
Reporter, certify that I was authorized to and did
stenographically report the foregoing videotaped
deposition, Pages 1 through 171; and that the transcript
is a true record of the testimony given by the witness.

I further certify that I am not a relative,
employee, attorney, or counsel of any of the parties,
nor am I a relative or employee of any of the parties'
attorneys or counsel connected with the action, nor am I
financially interested in the action.

Dated this 16th day of July, 2015.

Jennifer Figueroa

Jennifer Figueroa, RPR

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1 CERTIFICATE OF OATH
2
3

4 STATE OF FLORIDA
5
6

7 COUNTY OF HILLSBOROUGH
8
9

10 I, Jennifer Figueroa, Registered Professional
11 Reporter, Notary Public, State of Florida, certify that
12 CHERYL MERCURIS personally appeared before me on the 8th
13 day of July, 2015, and was duly sworn.

14 WITNESS my hand and official seal this 16th
15 day of July, 2015.

16 Identification:
17 Personally known or produced identification X.
18 Type of identification produced:
19 Florida driver's license.

20 
21

22 Jennifer Figueroa, RPR
23 Notary Public, State of Florida
24 Commission No.: EE 848734
25 Commission Expires: 03/02/2017

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